

FERNANDO v. PERERA *et al.*

D. C., Kalutara, 1,567.

1897.

July 23 & 27.

Partition Ordinance—Decree under it—Rights of the Crown.

A decree under section 9 of the Partition Ordinance of 1863 would not bind the Crown.

THE facts of the case appear in the judgment.

Dornhorst, for appellant.

Wendt and Sampayo, for respondent.

27th July, 1897. WITHERS, J.—

If this was manifestly Crown land when the plaintiff brought this action to have it partitioned between himself and the others whom he named as co-owners, the plaintiff's action should have been dismissed with costs.

The District Judge refused to order a partition until the parties should obtain a grant from the Crown, or a certificate of no claim—at least that is how I construe his order. He was apprehensive lest a decree should for ever bar the Crown, having regard to the stringent provisions of the 9th section of the Partition Ordinance of 1863. But a decree under this section would not bind the Crown. This enacts that "a decree for partition or sale shall be good and "conclusive against all persons whomsoever."

The Crown is not any such person.

The Crown may be barred though not named in a statute when none of its prerogatives or rights in property or of any kind are in the least degree affected, but in this Ordinance, where rights in property are very materially affected, the Crown to be bound must be specially named, or a manifest intention to include the Crown must appear in the provisions of the Ordinance.

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Far from that being the case, it is obvious from the very provisions of the Ordinance that the Crown is not touched by any decree under it.

I see no reason why the decree should be stayed on that ground. The parties have made out a *prima facie* claim to be deemed coowners.

The premises have been assessed as a private tenement by the local authority for Police and Local Board purposes for the last sixteen years at least. As long ago there was a judicial sale of parties' interests in the land. Nor to my mind does the evidence justify the opinion of the Judge that the land, when it was planted twenty-five years or so ago, was waste, uncultivated, and unoccupied. But it is useless to say more on this point, as nothing, I say, can affect the Crown. I think there should be a decree of partition.

[His Lordship here proceeded to discuss certain questions of fact at issue between the second and fifth defendants.]

BROWNE, J.—

I entirely agree, and have nothing to add.
