

1946

*Present : Nagalingam A.J.*

ARNOLIS SINGHO, Appellant, and MARY NONA *et al.*,  
Respondents.

197—C. R., *Panadure*, 10,373.

*Co-owner—Plantation made by him on more than his proportionate share—  
His right to possess the entirety of it as against the other co-owners.*

Where a co-owner plants more than his proportionate share of the common property he is entitled to possess the entire plantation as against the other co-owners till such time as the common ownership is put an end to in an action for partition.

**A** PPEAL from a judgment of the Commissioner of Requests,  
Panadure.

*M. D. H. Jayewardene*, for the plaintiff, appellant.

*H. W. Jayewardene*, for the defendants, respondents.

*Cur. adv. vult.*

<sup>1</sup> (1911) 14 N. L. R. 14.

<sup>2</sup> (1926) 28 N. L. R. 136.

<sup>3</sup> (1931) 33 N. L. R. 176.

November 29, 1946. NAGALINGAM A.J.—

The plaintiff who is admittedly a co-owner with the 1st defendant and certain others of the land described in the plaint institutes this action for a declaration that he is entitled to the possession of certain rubber trees planted by him on a portion of the common land and for damages for wrongful possession of the plantation by the defendants. The defendants deny that the plantation was made by the plaintiff and further plead that the land with the plantation which, according to them, had been made by another co-owner, Nomis, had been allotted by amicable partition to the 1st defendant who had acquired a prescriptive title to the land including the plantation.

After trial the learned Commissioner held in favour of the plaintiff that he had made the plantation himself and also found that since November, 1941, the defendants had dispossessed the plaintiff of his rubber plantation. The learned Commissioner, however, held that as the land was undivided, the plaintiff though he may have made the entire plantation could not claim to possess more than a third, as that fraction represented the proportionate share of the soil to which he was entitled.

The extent of the right of a co-owner to the fruits of improvements made by him was the subject of conflicting decisions but they were all reviewed in the case of *Podisingho v. Alwis*<sup>1</sup> where a bench consisting of Lyall Grant J. and Maartensz A.J. held that an improving co-owner is entitled to the fruits of the improvements effected by him. That case has recently been followed by Keuneman and Cannon JJ. in an unreported case, S. C. No. 2573, D. C. (F) Kalutara, 23,445, Supreme Court Minutes of 20th November, 1944. No case appears to have been cited to the learned Commissioner and in view of the two cases referred to above it must follow that the view of the learned Commissioner that the plaintiff is entitled to a one-third share of the plantation made by him cannot be supported. It is needless to add that the plaintiff will only be entitled to possess the plantation till such time as common ownership is put an end to by the institution of a properly constituted partition action in which the rights to compensation for the plantation would be adjudicated, in the event of the plantation made by him not being allotted to him. The learned Commissioner has accepted the quantum of damages as set out by the plaintiff, namely, the sum of Rs. 5 per mensem.

I would therefore set aside the judgment of the learned Commissioner and direct that decree be entered in favour of the plaintiff declaring him entitled to the possession of the rubber plantation standing on the land described in the plaint and to damages at Rs. 5 a month from November, 1941, till plaintiff is restored to possession of the plantation. The plaintiff will also be entitled to costs both of appeal and of the proceedings had in the lower Court.

*Appeal allowed.*

<sup>1</sup> (1920) 28 N. L. R. 201.