1932 *Present* : **Dalton J. and Jayewardene A. J.**

DE SILVA *v.* ODIRIS.

182—D. C. (Inty) Galle, 22,331.

Partition—Sale of land in lots—Appraised value not realized—Value of improvements—No deduction in compensation.

Where property is sold in lots under the Partition Ordinance, the value of the improvements cannot be increased or decreased according as the lots realized more or less than the appraised value.

The appraised value of the improvements must first be deducted before the proceeds of sale are distributed among the soil-owners.

APPEAL from an order of the District Judge of Galle.

H. V. Perera, for 10th defendant-appellant.

L. A. Rajapakse, for plaintiff-respondent.

June 6, 1932. DALTON J.—

This appeal raises a question under the Partition Ordinance, in a case where land and improvements thereon have been sold for a lower price than that at which the commissioner valued them.

The facts are as follows. The total extent of the land is just over 3 roods, and as it was not possible to divide this extent equitably amongst over fifty persons, a decree for sale was ordered. For the purpose of obtaining as good a price as was possible, the land was divided into three blocks as set out in plan (No. 861 A) to be sold separately, the value of the soil, trees, and buildings on each being separately appraised. The total appraisement of lot A was Rs. 2,730, the house thereon, the property of the tenth defendant being appraised at Rs. 2,000. The total appraisement of lot B was Rs. 2,040, the principal building thereon, a school, being appraised at Rs. 1,250. This school belonged to a society called the Sri Ubayartha Sadaka Society. The third block, lot C, had no buildings on it, the trees and soil being appraised in all at Rs. 1,030. When put up for sale on March 29, 1930, lot A fetched Rs. 2,735, being bought by the tenth defendant, the price paid being Rs. 5 over the appraised value. There was no bid for lot B, parties being said to be reluctant to buy it owing to the presence of the school there, not wishing apparently to compete with a charitable institution. Lot C was purchased for Rs. 775 by others than the co-owners. Lot B was subsequently put up for sale again on August 4, 1930, and purchased by the society for Rs. 150. It is clear that none of the co-owners wished to compete for the purchase of this block, nor was any attempt made at any time to have the appraised value revised.

Of the blocks sold, therefore, only block A realized the appraised value. That was purchased by the tenth defendant, who had been held by the Court to be entitled to the improvements, *i.e.*, the house thereon. He had been given credit for the sum of Rs. 2,000, the appraised value of his improvements. On the completion of the sales, however, the proctor for the plaintiff, who had been held to be entitled to 1/24 of the soil and nothing else, filed a fresh scheme of distribution of the proceeds of sales, whereby the deficiencies resulting from the sales of blocks B and C were to be made good from the proceeds of the sale of block A. By this scheme the amounts due to the owners of both soil shares and improvements were to be reduced proportionately, and the tenth defendant, who had already been given credit for the sum of Rs. 2,000, the value of the improvements made by him on block A, was called upon to show cause why he should not bring into Court the sum of Rs. 991.30. The trial judge accepted this amended scheme of distribution and ordered tenth defendant to bring the sum mentioned into Court.

The question to be decided here is whether, the prices obtained at the sales of lots B and C not having realized the appraised value, the deficiency is to be shared proportionately among the owners of the soil shares, the plantations, and the improvements on the three blocks A, B, and C.

The first matter for comment is that by the apparent common consent of all the co-owners there was no competition for block B. Although their motives for not competing with the society that eventually purchased the block were no doubt very excellent ones, they obviously cannot say they are not responsible for its failing to reach the appraised value. The second matter for remark here is that there were three sales and not one sale as in the cases cited by counsel.

Assuming, however, for purposes of argument that the sales should be regarded as a whole, there is authority to support appellant's contention that where property fetches at the sale more or less than the appraised value, the value of the improvements must first of all be deducted from the proceeds and the balance is then to be divided among the owners of the soil. This is on the footing that the value of the improvements as opposed to the interests in the soil shares is fixed and cannot be enhanced or decreased by any particular price realized at the sale. This was the view taken in *Kanapathypillai v. Nagalingam*[1]. Three earlier cases were cited in which a different view was taken (*De Silva v. Gunawardena*[2]; *De Silva v. Lokuhamy*[3]; and *Disemas v. Bandu*[4]). In these three cases it was held that the increase in value realized at a sale under the Partition Ordinance should be divided among the owners of all the different interests in proportion to the value of their shares according to the appraisements. These three cases do not appear to have been cited at the hearing of *Kanapathypillai v. Nagalingam* (*supra*), as they are not referred to by de Sampayo J. in his judgment. All four cases are, however, mentioned and considered by the late Mr. Justice A. St. V. Jayewardene in his *Law of Partition, pp. 172-174.* He there expresses his opinion that de Sampayo J. in *Kanapathypillai v. Nagalingam* (*supra*) lays down the more correct principle. Having regard to this difference of opinion, the decision in *Kanapathypillai v. Nagalingam* (*supra*) gives effect to the view I would prefer to follow. None of the cases cited to us deals with any deficiency in the appraised value resulting at the sales held, and hence it has been urged by counsel for respondent that the latter case is not binding on this Court. The same argument applies of course to the authorities on which counsel relies. It is not, however, suggested that the principle on this particular question applicable in the case of a surplus would be different from that applicable to a deficiency, which explains why de Sampayo J. although dealing with a surplus, holds that the value of improvements in a sale under the Partition Ordinance could not be enhanced or decreased by the accident of any particular price realized at the sale. I presume a case of a sale, in which the price realized was less than the appraised value of the improvements alone, would not in practice arise, since the owner of the improvements would as a general rule bid up to the appraised value for his own protection.

In considering this question, the trial judge has followed the earlier decisions, to which I have referred, but in my opinion he was wrong in doing so. The fresh scheme of distribution submitted after the sales by plaintiff should have been rejected. The appeal must be allowed for the reasons I have given, and the order directing the tenth defendant to pay the sum of Rs. 991.30 into Court is set aside.

The appeal is allowed with costs.

JAYEWARDENE A.J.—I concur. As to costs, we are agreed that the appellant should have the costs of the appeal and the costs of this contention only in the District Court.

Appeal allowed.

[1] *22 N. L. R. 223.*
[2] *1 Matara Cases 43.*
[3] *1 Matara Cases 46.*
[4] *5 Bal. Rep. 87.*