

1956

Present : Gratiaen, J.

K. NAGALINGAM *et al.*, Appellants, and KATHIRASIPILLAI *et al.*,
Respondents

S. C. 4—C. R. Jaffna, 1,970A

Servitude—Right of way—Splitting up of a land—Right of each portion to outlet.

Where a land, one of the boundaries of which is a public lane, is split up into two or more portions, the back portion, which would otherwise be land-locked, must retain its outlet to the public lane over the front portion, even in the absence of an express reservation of a servitude. The splitting of the land cannot impose a servitude upon the neighbours.

APPEAL from a judgment of the Court of Requests, Jaffna.

C. Ranganathan, with *P. Naguleswaram*, for the 2nd to 4th defendants appellants.

A. Sambandan, with *S. Thangarajah*, for the plaintiff respondent.

Cur. adv. vult.

March 22, 1956. GRATIAEN, J.—

This is an appeal against a judgment declaring the plaintiff, as owner of a divided allotment of land described in schedule A to his plaint, entitled as against the appellants to a right of way of necessity over a path (described in schedule B) leading to a public lane (hereafter called: "the Eastern lane").

The relevant facts are best understood by reference to the sketch P4 filed of record. The plaintiff's allotment (Lot 4) had originally formed part of a larger land (including Lots 1, 2, and 3) belonging to her parents. The Northern boundary of this larger land was a different public lane (hereafter referred to as "the Northern lane"), and the entire property was later subdivided between members of the plaintiff's family. The conveyance in favour of the plaintiff (P1 of 1928) passed title to her in respect of Lots 3 and 4 together with, *inter alia*, a right of way and water-course leading to a well (situated on Lot 1) which almost adjoins the Northern lane. The plaintiff later conveyed Lot 3 to her daughter in 1944 together with similar servitudes.

The right of way now claimed by the plaintiff is along a path which lies immediately to the South of Lot 4. This path had at one stage formed part of a different land, owned in common by the appellants and others, which was the subject matter of a final decree for partition dated 31st October 1944 in D. C. Jaffna No. 16799. The footpath was reserved for the common use of the proprietors of the several divided allotments dealt with by the decree in order to give them access to the Eastern lane.

It is admittedly immaterial to the plaintiff whether he should have access from Lot 4 to the Northern lane or to the Eastern lane. The basis of his claim is that the owners of Lots 1 and 2 will not permit him a right of way over their lands, so that he must of necessity be granted a servitude along the path which is the common property of the appellants. The learned Commissioner accepted this argument and entered judgment in his favour as prayed for.

The plaintiff's claim clearly cannot be sustained. Lot 4 originally formed part of a larger land which was admittedly served by the Northern lane. Upon the subdivision of the larger land, each person who received an allotment which would otherwise be land-locked automatically became entitled under the Roman Dutch Law to a right of way over the allotment or allotments adjoining the public lane. *Maasdorp (Edn. 7th) II, pp. 182-183*. As was pointed out in *Wilhelm v. Norton*¹ :

“When a piece of land is split up into two or more portions, the back portion must retain its outlet over the front portion even though nothing was said about it, because the splitting of the land cannot impose a servitude upon the neighbours.”

This very sensible principle would have applied in the present case even in the absence of an express reservation of a servitude. But I observe that the conveyance P1 in favour of the plaintiff did reserve to her, as owner of Lots 3 and 4, a right of way leading to the well on Lot 1, so that all that remains for him is to vindicate against his relatives who now own Lot 1 his right of access to the Northern lane which lies only a few yards beyond the well. Accordingly, the foundation to her claim to a right of way over the appellant's common property disappears. I allow the appeal, and dismiss the plaintiff's action with costs in both Courts.

Appeal allowed.
