

THE  
NEW LAW REPORTS OF CEYLON

VOLUME XXVII.

Present : De Sampayo and Schneider JJ.

1925.

PUNCHIHAMY *v.* PREMARATNE HAMINE.

330—D. C. Kurunegala, 8,224.

*Registration—Mortgage of share of land with other lands by the same bond—Lease—Action by purchaser in execution—Correct folio—Consolidation for purpose of registration.*

Where the owner of the undivided share of a land mortgaged it with other lands by the same bond and registered it in a certain folio,

*Held* that the said folio was not the proper one for the registration of subsequent deeds dealing with the undivided share of land, and that there had been no consolidation of the lands for the purpose of registration.

*Fernando v. Perera*<sup>1</sup> followed.

**A**CTION by the plaintiff to be declared entitled as owner to the possession of a share of a land called Makuluduwela as against the second defendant who claimed on a lease for a term of fifteen years. Both derived their right from the same source, the first defendant, who mortgaged the said share with the plaintiff upon three bonds, the last of which was dated after, but registered before the lease in favour of the defendant.

The plaintiff put the bonds in suit and purchased the share of the land in question in execution. The decision turned on the effect of the registration of the deeds relied upon by either party, the facts regarding which are stated in the argument. The learned District Judge held in favour of the plaintiff.

<sup>1</sup> (1917) 20 N. L. R. 119.

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*Drieberg, K.C.* (with him *H. V. Perera* and *Ranawake*), for the defendants, appellants.—The mortgage bonds on which plaintiff obtained the decree are four in number. Of these, only three relate to the present land, and the fourth to a wholly different land. Of the three bonds only one was of date subsequent to the lease, but registered prior. The decree being in respect of all four bonds, it is not, therefore, clear how it could be said that the sale to plaintiff was by virtue of the mortgage on bond subsequent in date to the lease. Other lands than the land in dispute have also been sold thereunder. Hence the decision in *Mutturamen v. Massilamany*<sup>1</sup> will not apply to a case such as this.

If plaintiff is to be given priority by registration, he ought to register in the proper folio. There is, undoubtedly, a registration of this very same land in 1882 in A 37/155. The question then to be decided is whether this registration is good. Plaintiff's registration is in A 61/169. So that if the registration of 1882 is a good and valid registration, defendant is entitled to succeed as plaintiff will lose his priority by registration.

The registration of 1882 is the earliest in point of time, it refers to the land in dispute, and though no other entry has been made thereunder, A 37/155 must be considered the proper folio.

There is also the question whether the defendants are bound by the mortgage decree. No addresses have been registered by the plaintiff, nor have the lessees been made parties.

*Samarawickreme, K.C.* (with him *Croos Da Brera*), for plaintiff, respondent.—The registration A 61/169 goes as far back as 1891 and since then all dealings have been connected up with A 61/169. The extent in A 37/155 is larger. There is no proof that at any time the land was consolidated. Hence A 61/169 must be taken to be the correct folio, and the plaintiff's deed is, therefore, duly registered.

With regard to the decree all that need be said is that if one bond prevails over the lease, then the decree and the writ thereunder prevails over the lease, and the plaintiff is entitled to possession.

The question of non-registration of address was never seriously pressed in the Court below, and it is not pressed here in appeal.

In any event the plaintiff is entitled to be compensated.

*Drieberg, K.C.* (in reply). The difficulty has not been met. There is some registration of this same land in 1882. There is no connection between plaintiff's registration and the early registration of 1882. Hence plaintiff cannot claim priority.

A decree cannot be separated. So that if some of the mortgage bonds do not prevail over defendant's leases, then the decree and the rights accruing thereunder cannot prevail.

<sup>1</sup> (1913) 16 N. L. R. 289.

July 10, 1925. SCHNEIDER J.—

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The contest in this action relates to the possession of a share in a land. The plaintiff claims possession as being the owner and the second defendant as a lessee for a term of fifteen years. Both derive their right from the same source, viz., the first defendant. The first defendant does not dispute the claim of either party. The added-defendant seeks to warrant and defend the right of possession under the lease which he assigned to the second defendant, and which right the second defendant asserts as against the plaintiff. The interest claimed by the plaintiff is adverse to the interest claimed by the second defendant. The decision of the dispute turns solely upon the effect of the registration of the deeds relied upon by either party. Each party contends that his deeds are registered in the right book, and that his opponents' are not so registered.<sup>1</sup> The learned District Judge held in favour of the plaintiff. This appeal is by the second defendant and added-defendant.

On appeal the argument was confined to this question of registration. The series of registrations relied on by the plaintiff, and which are Connected together by appropriate references, starts with the registration of a deed in July, 1891, in Division A, Vol. 61, folio 169. The deed is a transfer of an undivided half share of a land called "Makuluduwela and its adjoining pillewa" of 3 amunams of paddy sowing extent and 5 lahas of kurakkan sowing extent, respectively, and bounded as follows :—

" East by limit of Kahapitiambekumbura and limit of Kadurukumburawatta.

" South by village limit of Pilessa.

" West by limit of the field of Kirihamy Korale Arachchi.

" North by village limit of Pilessa and property of Maralande Walauwa."

It is this description of the land which the plaintiff has given in his plaint, and it is the description which is to be found in all the deeds relied on by him. The correctness of this description has not been questioned by the contesting defendants. I must, therefore, regard it as having been accepted by them.

In this series of registrations which runs from July, 1891, to April, 1920, the following deeds should be noticed :—

- (1) Deed No. 18,907 registered on July 13, 1891, being a transfer of an undivided half share of the land by Tikiri Banda to Mudalihamy.
- (2) Deed No. 18,034 registered in January, 1914, being a transfer of that share by Mudalihamy to Kiri Banda, the first defendant.
- (3) Bond No. 18,044 dated November, 1913, and registered in January, 1914.

<sup>1</sup> Section 15, The Land Registration Ordinance, No. 14 of 1891.

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- (4) Bond No. 19,227 dated June, 1914, and registered in July, 1914.
- (5) Bond No. 22,598 dated May, 1916, and registered in May, 1916.
- (6) Deed No. 30,075 dated March, 1920, and registered in April, 1920.

By all the three bonds mentioned above, the first defendant mortgaged the share in question with the plaintiff. In November, 1918, the plaintiff instituted action No. 7,194 in the District Court of Kurunegala against the first defendant alone upon those three bonds and another bond and obtained a hypothecary decree for a lump sum due upon all the bonds sued upon, and declaring all the lands mortgaged bound and executable for the recovery of that sum. In execution of this decree the share in question was sold in January, 1920, and was purchased by the plaintiff to whom it was transferred by the said deed No. 30,075.

The lease relied upon by the second defendant is dated April, 1915, and was registered in October, 1916.

Upon this statement of the facts, it is apparent that the two earlier bonds in favour of the plaintiff are prior in date to the lease, both as regards execution and also registration, and that the other bond is prior as regards the date of registration. If the registrations relied on by the plaintiff are in the right book, and even if the registrations relied on by the second defendant are also in the right book, nevertheless the plaintiff would be entitled to claim preference over the lease for the two bonds of prior date, and also that the lease should "be deemed void" as against him as regards his rights under the bond subsequent in date to the lease but prior in date as regards registration.<sup>1</sup>

According to *Mutturamen v. Massilamany (supra)*, a decision of a bench of three Judges, the lease relied on by the second defendant is void as against the plaintiff, the purchaser, under the mortgage decree upon a bond in date subsequent to the lease but registered prior to the lease, as the competition is between the lease and the mortgage and not between the lease and the transfer in favour of the plaintiff.

To escape from this situation Mr. Drieberg for the defendants, appellants, addressed three arguments to us. He argued that as the decree was obtained upon four bonds, and one of them was unconnected with the land in dispute and other lands than the one in dispute were also sold under the same decree, that it was not clear that the sale to the plaintiff was under the mortgage created by the bond subsequent in date to the lease. This argument is not sound. The decree was for a lump sum which included the sum due on that bond. Accordingly, the sale of the share in dispute under the decree must be deemed to have been upon the mortgage created by that bond.

<sup>1</sup> Section 17, Ordinance No. 14 of 1891.

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His next argument has to be carefully considered. He argued that the proper book for the registration of deeds relating to the land in dispute is not that in which the registration of the plaintiff's deeds started, but the book in which is to be found the registration of a deed in 1882. It is a book marked Division A, Vol. 37, folio 155. The deed is a bond granted by one Tenne " R. M." and his wife in favour of two Chetties mortgaging an undivided half share of five allotments of land called (1) Kannassewela, 2 pelas in extent ; (2) Kahatagahaweliwela, in extent also 2 pelas ; (3) Dingiriyakumbura, again 2 pelas in extent ; (4) Boralankadahena, in extent 5 amunams ; and (5) Makurundewela, in extent 3 amunams. They are described as " all forming one property," and bounded on the—

" North by property of Pilessa villagers and of ' Maralande Walauwe.'

" East by limit of Kahapittiye-ambe.

" South by the limit of the village ' Pilessa.'

" West by Kirihamy Korale Arachchi's field."

The only deed registered in this book and in that folio is the deed of 1882. There is no reference to the registration of any other deeds. The defendant's deeds are not registered in that book, nor are the registrations relied on by the plaintiff connected with that book. Mr. Drieberg argued on appeal, as it had been argued in the lower Court, that the fifth land registered there was a portion of the land in dispute. I will accept that statement to be correct, although it should be noticed that the land is called Makurundewela, and the extent is given as 3 amunams in A 37/155, the book and folio relied upon by Mr. Drieberg, while in A 61/169, the book and folio relied upon by the plaintiff, it is called Makuluduwela of 3 amunams and its adjoining pillewa of 5 lahas kurakkan. There is also a difference in the eastern and northern boundaries.

Mr. Drieberg's contention, assuming his facts to be correct, therefore amounts to this, that as a deed dealing with a portion of the land in dispute was registered with four other lands in A 61/169 that is the right place for the registration of all subsequent deeds connected with the land in dispute. This contention must fail if the decision in *Fernando v. Perera (supra)* is applicable to this case. I am unable to differentiate the facts of that case from the facts of this case. Here, as in that case, the several lands registered as one property cannot be regarded as having been consolidated for the purpose of registration. Here, as in that case, the owner of an undivided share of a land had no right to consolidate that land with other lands for the purpose of registration. All the reasoning given by my brother De Sampayo in that case apply with equal force in the decision of this case. I would, therefore, hold that Mr. Drieberg's second contention also fails even assuming the facts to be as alleged by him

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The decision of this contention renders it unnecessary to consider his third contention that his deeds are those which are registered in the right book and folio.

I would add that it is not at all clear from the documents upon which alone this case has been decided that the first defendant derived title to the undivided half share claimed by the plaintiff in this action from the same source from which he derived title to the land leased by him and others to the second defendant's predecessor.

I would, therefore, uphold the judgment of the learned District Judge and dismiss the appeal of the second defendant and added-defendant, with costs.

DE SAMPAYO J.—I agree.

*Appeal dismissed.*

