

Present : Wood Renton C.J. and De Sampayo J.

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133—D. C. Negombo. 11.808.

*Land Registration Ordinance, No. 14 of 1891—Separate lands leased, together with one set of boundaries—Registered as one block—Is registration valid ?*

Under the Registration Ordinance, 1891, each land must be dealt with as a distinct *corpus*; the owner may, however, consolidate several contiguous lands and constitute out of these elements such a *corpus*, but in such a case it is necessary that reference should be made to the previous registration of the separate lands. Where, therefore, G, who was entitled to a half share of one lot of 3 acres 2 roods and 20 perches, leased along with his mother an extent of 10 acres, including his lot, describing the whole by one set of boundaries, and the whole extent was registered as one *corpus*—

*Held*, that the registration of the lease did not amount to a registration of a deed relating to or affecting this particular land.

“ Though G described all the lands leased by him by one set of boundaries, he did not make any such consolidation; nor, indeed, could he do so, seeing that he was at that time entitled to an undivided half share only of the land in question (of 3 acres 2 roods and 20 perches). ”

**T**HE facts are set out in the judgment.

*Bawa, K.C.* (with him *Canakeratne*), for the appellant.

*Drieberg*, for defendant, respondent.

*Cur. adv. vult.*

<sup>1</sup> *Ratanlal's Unreported Crim. Cases 492.*

<sup>2</sup> *Ratanlal's Unreported Crim. Cases 688.*

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The two contiguous allotments of land called Kongahawatta and Makullagahawatta, 3 acres 2 roods and 20 perches in extent, and forming one land, originally belonged to Paulu de Silva and his wife Catherina, and were gifted by them to their children, Gabriel and Maria, on deed No. 2,395 dated August 6, 1870. This deed of gift was registered on August 13, 1897, in folio B 51/378, in which two leases granted by Gabriel and Maria for their respective half shares in July, 1897, had been registered on July 21, 1897. A subsequent lease granted by Gabriel for his half share in May, 1899, was also registered on June 23, 1899, in the same folio. By deed No. 305 dated January 8, 1915, and duly registered, Maria gifted her half share to her son, the plaintiff. In the action No. 10,444, D. C. Negombo, the land was partitioned, and by decree dated November 23, 1915, lot A was allotted to the plaintiff, and lot B, which is the subject of the present action, was allotted to Gabriel. The lots A and B were then registered in new folios, with appropriate reference to the old folio, in terms of section 27 of the Land Registration Ordinance, No. 14 of 1891. Under writ of execution against Gabriel lot B was sold by the Fiscal and purchased by the plaintiff, and the Fiscal's transfer was registered on January 27, 1917, in the new folio appropriated to lot B.

So far as the above series of deeds is concerned, the right folio for the purposes of registration was the original folio B 51/378, inasmuch as it was the folio which the Registrar had opened for registering deeds relating to this particular land, and in which the first of such deeds was registered. (See *Silva v. Appu*<sup>1</sup> and *Fernando v. Pedro Pulle*.<sup>2</sup>) But the defendant wishes to carry the registration to a still earlier date, and relies on a different folio as the right folio. It appears that by deed of lease No. 3,173 dated January 9, 1893, Gabriel and his mother Catherina, to whom a life interest had been reserved by the deed of gift, leased to the defendant a block of land 10 acres in extent, comprising several allotments, of which the land presently in question was one, describing the whole by one set of boundaries. This deed of lease was registered on April 17, 1894, in the folio B 40/300; and again on September 27, 1894, and August 18, 1902, Gabriel himself leased this large block of land to the defendant by two deeds of lease, which were registered in the same folio, or with appropriate references thereto. The last of these leases was for fifteen years, commencing from January 9, 1906, and the defendant contends that this folio B 40/300, with its continuation, is the right folio, and that as plaintiff's Fiscal's transfer is not registered in that folio, the plaintiff's title to lot B cannot prevail by virtue of registration over his right to possession as lessee.

<sup>1</sup> (1914) 4 Bal. Notes of Cases 28.

<sup>2</sup> (1916) 2 C. W. R. 75.

In *Bernard v. Fernando*<sup>1</sup> I ventured to express an opinion that as a partition decree created a new and absolutely good title, no question of registration could arise so as to effect the title based thereon by the production of any deed registered prior to the decree. I am still of that opinion, and I think that the rights of the parties to this action should be determined independently of any registration. However that may be, as the parties fought out the case on the question of registration, the point for consideration is whether the defendant's lease of 1902 can be said to have been registered in the right folio. What was registered in folio B 40/300 was not a lease of the land which was the subject of the donation and of the partition decree, but a lease of a large block including it and other lands. It was admitted at the trial, on behalf of the defendant, that the land partitioned was a separate land from those other lands included in the defendant's lease. Now, section 15 of the Ordinance provides for the keeping of books for registering deeds relating to lands "in such manner as to facilitate reference to all existing alienations or encumbrances affecting the same lands." Section 16 provides for the registration of every deed or other instrument for the sale, &c., "of any land or other immovable property," or for establishing any interest or encumbrance "affecting such land or property." The policy of the whole Ordinance is to facilitate reference to existing alienations and encumbrances, and in order to carry it out effectually, section 23 further provides that every deed shall contain an accurate description of the property which is affected thereby, its boundaries, extent, and situation, and that if such property consists of a portion only of one land or allotment, such portion shall be clearly and accurately defined by its particular boundaries and extent. It appears to me that the Ordinance intends, and in view of its policy must intend, that each land shall be dealt with by itself as a distinct *corpus*. Otherwise reference to existing alienations and encumbrances, so far from being facilitated, will be rendered difficult, if not impossible. It is, of course, for this purpose allowable for the owner to consolidate several lands and constitute out of these elements a distinct *corpus*; but in such a case it is still necessary, as held in *Mariku v. Fernando*,<sup>2</sup> that reference should be made in any previous registration of the separate lands. In my view, however, though Gabriel described all the lands leased by him by one set of boundaries (probably for the sake of convenience, and likewise following the description of the old lease in 1893, which did not describe the lands separately, because Catherina was apparently entitled herself to lease all the lands as a whole), he did not make any such consolidation, nor, indeed, could he do so, seeing that he was at that time entitled to an undivided half share only of the land in question. As a matter of fact, even after the first two leases for the whole block of

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10 acres in 1893 and 1894, Gabriel, as stated above, leased in 1897 and 1899 his interest in this land alone as a separate and distinct land. Moreover, the hypothesis of a consolidation cannot be maintained in the face of the admission made at the trial that this land was a separate land from the other lands included in the defendant's lease. I therefore think that the registration of the lease did not amount to registration of a deed relating to or affecting this particular land within the meaning and intention of the Registration Ordinance, and that the plaintiff's Fiscal's transfer is superior in title so far as registration is concerned. This being so, it is unnecessary to discuss the further question argued before us, whether the defendant's lease of 1902 is conserved by the operation of section 13 of the Partition Ordinance and attaches to lot B in dispute, even though the defendant was not a party to the partition action No. 10,444.

I would set aside the decree under appeal, and direct judgment to be entered in favour of the plaintiff for lot B and for possession thereof, with damages at the rate of Rs. 10 per month as agreed in the District Court, and with costs of this appeal and of the action.

WOOD RENTON C.J.—

The delay that has taken place in the delivery of our judgments in this case has been due partly to the absence of my Brother de Sampayo on circuit, but chiefly to its intrinsic difficulty. I entertain considerable doubts on the subject, but, on the whole, I am not prepared to differ on the facts from the opinion of my Brother on the question of registration. There is no need to say anything as to the construction of section 13 of the Partition Ordinance, 1863.<sup>1</sup>

I agree to the order which my Brother has proposed.

*Set aside.*