

Present : Jayewardene A.J.

1925.

CHARLIS APPU *v.* ADRIS APPU *et al.*

185—C. R. Galle, 4,833.

Grain Tax Register—Evidentiary value of entries—Evidence Ordinance, s. 35.

The entry in a Grain Tax Register of a person's name as owner proves that such person claimed title to the land as owner, and asserted it to the satisfaction of the Commissioners. Such an entry is admissible in evidence under section 35 of the Evidence Ordinance.

The *dictum* of Hutchinson C.J. in *Jayasekera v. Waniguratna*¹ considered.

A PPEAL from a judgment of the Commissioner of Requests, Galle. The facts appear sufficiently from the judgment.

J. S. Jayewardene for first defendant, appellant.

Schokman for plaintiff, respondent.

November 2, 1925. JAYEWARDENE A.J.—

At the conclusion of the argument of this case I dismissed the appeal. I, however, stated that I would give my reasons in writing in view of the contention of learned Counsel for the appellant that

¹ (1909) 12 N. L. R. 364 (366).

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the entry in the Grain Tax Register of the name of a person as owner was of no value as evidence, except under certain circumstances which were not present in the case, on the authority of the *dictum* of Hutchinson C.J. in *Jayasekere v. Wanigaratna* (*supra*).

In the present case one Juwanis Silva purchased in execution a share of the field in dispute in the year 1879. He obtained no Fiscal's transfer, but his successors claimed to have acquired a title by prescription to this share. In proof of their possession they produced *inter alia* certified extracts from the Grain Tax Commutation Register of the Talpe pattu, where the field is situated, for the years 1882 and 1889 in which Juwanis Silva's name is given as one of the owners. The learned Commissioner accepted these in evidence and upheld the claim by prescription. It is contended that the Judge was wrong in doing so. Counsel cited in support of his contention the following passage from the judgment of the learned Chief Justice in the case referred to :—

“ He (the District Judge) places too much reliance on the fact of the entry of the respondents' names in the Grain Tax Register The fact is that these registers are of no value at all as evidence of the title of the persons entered in them as owners, without evidence as to the persons by whom and on whose information and the circumstances under which the names were entered. The entry of A's name by an officer proves nothing in itself, but if it was done on B's request or information it would be strong evidence against any claim by B.”

Now these Grain Tax Registers were registers kept under the repealed Grain Tax Ordinance, 1878. Under that Ordinance it was lawful for the Governor to appoint an officer or officers, not exceeding three in number, to be called “the Grain Commissioners,” and these Commissioners had to enter in a register to be kept for each district *inter alia* “the name or names of the reputed owner or owners of such field or parcel of land” and the amount of annual commutation or crop commutation payable in respect of each field. The Commissioners or persons duly authorized by them were empowered to summon and examine witnesses on oath or affirmation, to enter in or upon any land, and to compel the production of documents. The register was to be kept in the English language with each English word translated into its equivalent in the native language most prevalent in the district, and was to be open for inspection at the Kachcheri by all persons interested therein. The right was given to parties interested to obtain the correction of any error or defect in the register by appealing to the Governor in Executive Council.

If the ownership of a land was in dispute or doubtful, the Commissioners had to determine who was the owner of the land for the purposes of the Ordinance, and such determination was regarded as final.

The entries in the register were to be conclusive evidence for the purposes of the Ordinance of all the facts entered therein.

Thus the Grain Tax Register being an official register kept by a public servant under the provisions of a Statute, the provisions of section 35 of the Evidence Ordinance would apply to it. That section declares th at—

An entry in any public or other official book, register, or record stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty especially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

If such entries contain relevant facts they are clearly admissible in evidence. The weight to be attached to them as evidence is, however, a different matter.

“ Though the register may be *prima facie* evidence of matters directed or authorized to be inserted therein, yet the person relying on the register may, by offering other evidence, displace the presumption which the register affords. A person who is not a party to the making of the entry is not bound by the statements in it, in the sense of being estopped or concluded by them. They are only received as evidence and are open to be answered, and the statements in them may be rebutted.¹ ”

Under the Grain Tax Ordinance the Commissioners had to decide the question of ownership of land for the purposes of the Ordinance (section 8). The fact that a person's name was entered in this register as owner would not be evidence that he was in fact the owner or that someone else was not the owner : *Bhagoji v. Bapuji*.² But it would prove that such person did claim title to the land as owner and became subject to the statutory duties and obligations, that he asserted it to such good effect that he convinced the Commissioner of his title to the land. If the Grain Tax Register stood alone it might be that the evidence of possession afforded by it is not very strong, but if it is supported by other facts, the entry might be regarded as a piece of evidence of considerable value. There is such evidence in the present case. Further, it must be remembered that until the Civil Procedure Code came into operation in the year 1890, it was thought that purchasers at Fiscal's sales acquired title to property sold in execution immediately on the sale thereof,

¹ *Ameer Ali and Woodroffe's Law of Evidence, p. 352 (6th Edition).*

² (1888) 13 Bom. 75.

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and that the issue of a Fiscal's transfer was not essential to pass title. A copy of the sale report was relied on as in this case in proof of the sale. But this view was shown to be erroneous in *Silva v. Nona Hamine*¹ by a Bench of three Judges of this Court. As the Grain Tax Register is an official register kept under the provisions of a statute I do not think that it is necessary to have evidence as to the persons by whom and on whose information and the circumstances under which the names were entered, or that the entry of a person's name by an officer proves nothing and that it is evidence only against the person at whose instance the entry was made. The Commissioners had power to examine witnesses and to compel the production of documents for the purpose of ascertaining the facts required to be entered in the register. They were acting judicially or quasi-judicially. The value to be attached to public registers as evidence has been discussed in many English cases. I would only refer to the leading case of *Sturla v. Frecciu*² where Lord Blackburn in the course of his speech in the House of Lords cited the following passage from the judgment of Baron Parke in *The Irish Society v. The Bishop of Derry*³ :—

“ In public documents made for the information of the Crown or all the King's subjects who require the information they contain, the entry by a public officer is presumed to be true when it is made, and is for that reason receivable in all cases, whether the officer or his successor may be concerned in such cases or not.”

The Privy Council in the case of *Lekraj Kuar v. Mahpal Singh*⁴ was called upon to construe section 35 of the Indian Evidence Act, which is the same as section 35 of our Ordinance, and the Judicial Committee said—

It is necessary to look at the precise term of this section ; and for the present purpose it may be read : ‘ An entry in any official record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duties is itself a relevant fact.’ There can be no doubt that the entries in question, supposing them to bear the construction already given to them, state a relevant fact, if not the very fact, in issue, viz., the usage of the Bahrulia clan. If so, then, the entry having stated that relevant fact the entry itself becomes by force of the section a relevant fact ; that is to say, it may be given in evidence as a relevant fact, because, being made by a public officer, it contains an entry of a fact which is relevant.

¹ (1905) 10 N. L. R. 44.

² (1880) L. R. 5 App. Cas. 623.

³ (1846) 12 Cl. & F. 641.

⁴ (1879) 5 Cal. 745.

As I have already stated Juwanis Silva asserted title to the share bought by him in execution and succeeded in convincing the Commissioners that he was one of the owners of the land. This is a relevant fact and is admissible in evidence and due weight must be given to it.

In my opinion, therefore, the extracts from the Grain Tax Register were rightly admitted in evidence although there was no evidence as to the persons by whom or on whose information and the circumstances under which Juwanis Silva's name was entered in the register.

Appeal dismissed.

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