

Present: Wood Renton J. and Grenier J.

1911.

MOHAMMADU SALI v. ISA NATCHIA et al.

170—D. C. (Inty.) Kalutara, 4.547.

Registration—Wrong folio—Priority.

A deed which was registered in the wrong folio through the negligence of the grantee was held to be void as against a subsequent deed registered in the proper folio.

THE facts appear from the judgment.

Sampayo, K.C., for the appellant.

van Langenberg (with him *Balasingham*), for the respondent; *De Mel v. Fernando*¹ was cited at the argument.

Cur. adv. vult.

December 4, 1911. WOOD RENTON J.—

The plaintiff-respondent in this action claimed the partition of the land described in the plaint, allotting to himself a one-fourth share by right of purchase on deed No. 4,991 dated March 27, 1910, and registered on March 30 in the same year. The added defendant-appellant intervened in the action, claiming to be entitled to the same one-fourth share by right of purchase from the respondent-vendor on deed No. 9,071 dated February 17, 1910, and registered on February 21, 1910. The learned District Judge held that the lands conveyed by the two deeds were identical. But he also held that the respondent's deed, although later in date and in registration, was entitled to priority over the deed of the appellant, because the latter deed had been registered in the wrong folio through the negligence of the appellant himself. "It appears," said the District Judge, "that the defendant's deed was registered under a different folio than the one in which it would have been placed, if the name, extent, and boundaries had been the same as those appearing in the plaintiff's deed." This finding is supported by the evidence, and the only point that we have here to decide is whether the District Judge was right in law in holding, as he did, that the effect of the mistake was to deprive the appellant of the benefit of his prior registration. In my opinion that question must be answered in the affirmative. The view of the law taken by the District Judge is strongly supported by the language of section 15 (1), section 16, and section 17 of "The Land Registration Ordinance, 1891" (No. 14 of 1891). Section 15 (1) requires the Registrar to prepare and keep books "for the registration therein of any deed which may be brought to him for registration as hereinafter provided; allotting to each book some defined division of the province or district, so that every

¹ (1900) 4 N. L. R. 290.

1911. deed relating to lands situate therein may be registered therein in such manner as to facilitate reference to all existing alienations or incumbrances affecting the same lands"; section 16 provides that all the categories of deeds which are enumerated in it "shall be registered in the branch office of the district in which such land or property is situate; that is to say, in the books mentioned in the preceding sections"; and section 17 deprives of the benefit of registration deeds which are not "so registered," unless there has been fraud or collusion in obtaining the rival deed, or in securing the prior registration.

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There is a suggestion in the petition of appeal that the plaintiff-respondent has been guilty of fraud in the present case. But there is no issue as to fraud, and the learned District Judge, while he was obviously somewhat suspicious of the respondent's proceedings, has held that there is no clear proof that he had, in fact, obtained his deed fraudulently. That being so, I do not think that it would be fair to allow that point to be raised against the plaintiff-respondent now. The case, therefore, depends on the construction of Ordinance No. 14 of 1891, the effect of which has just been stated. It seems to me that the District Judge has interpreted the law correctly. In view of his findings on the facts, particularly as to the appellant's negligence, I think that the appeal should be dismissed with costs.

GRENIER J.—I agree.

Appeal dismissed.

