

1920.

Present : De Sampayo J.

SINGHO v. WIJESINGHE *et al.*

45—C. R. Avissawella, 10,459.

Registration—Different names—Is identity of names essential?—Wrong folio.

A sold her interest in a land to the plaintiff by deed dated January 4, 1916, and registered on January 24, 1919. Subsequently by deed dated January 3, 1919, A sold the land to the defendant, and this deed was registered on January 8, 1919. Plaintiff's deed was registered in a folio in which a deed relating to the land was first registered (a deed of 1900). Defendant's deed was registered in a different folio and under a different name. In a deed of 1856 this land was called Danketiyahena, and under this name the land was sold to the defendant. But in plaintiff's deed and in the deed of 1900 the name given was Kehelkotuwehitinawatta.

Held, that the plaintiff had superior title, as identity of name was not essential for registration.

"I think the Commissioner, in holding, as he did, that the registration of this particular land should have been according to the name by which the land was called in the old deed, is not right."

THE facts are set out in the judgment.

Croos-Dabrera (with him *E. G. P. Jayatileke*), for plaintiff, appellant.—The right folio is that in which a deed regarding a land is first registered and all folios connected with such folio. The defendant's deed is registered in a different folio unconnected with the original folio. The plaintiff's deed, on the other hand, is registered in a folio connected with the original folio. The defendant cannot, therefore, claim the benefit of prior registration. The plaintiff's deed is prior in date, and therefore his title is better. The Commissioner has decided in defendant's favour on the ground that his deed gives the correct name of the land. It is submitted that this makes no difference so long as the *corpus* is the same. It is the registration of a deed regarding a particular land that determines the folio. There is no question that the same land has been dealt with by both the deeds. Counsel cited the judgment of the Privy Council in *Rajapakse v. Fernando*.¹

Canekeratne, for defendants, respondents.—The name given to the land in defendant's deed is that which occurs in the earliest deed affecting the land. The plaintiff's deed gives the land a different

¹ (1920) 21 N. L. R. 495.

name. The proper folio should be that in which a deed regarding the land is registered under its correct name. To hold otherwise would cause much inconvenience and hardship, and may open the door to fraud.

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July 20, 1920. DE SAMPAYO J.—

This appeal raises an important question relating to registration of deeds. Ran Menika was the admitted owner of one-sixth share of a land which the plaintiff calls Kehelkotuwehitinawatta. She had a daughter named Nonahamy *alias* Dingiri Etena, who by deed dated January 4, 1916, registered on January 24, 1919, sold that interest to the plaintiff, but, notwithstanding that transaction, Nonahamy sold the share again to the defendant by deed dated January 3, 1919, and registered on January 8, 1919. It will be seen that the defendant's deed though subsequent in date was registered prior to the plaintiff's deed, and accordingly the defendant claims the benefit of prior registration by virtue of section 17 of the Land Registration Ordinance. Here the defendant is confronted with the fact that the plaintiff's deed was registered in a folio in which a deed relating to the land was first registered, namely, a deed of February, 1, 1900, whereas the defendant's deed was registered in a different folio, and so the plaintiff contends that the defendant's deed was not registered in the right folio. The defendant in his turn, however, seeks to meet the difficulty by relying on a difference in the name of the land. It appears that in a deed of 1856 relating to this land it was called Danketiyahena, and that is the name which is given in the deed in favour of the defendant, but in the plaintiff's deed as well as in the deed of February 1, 1900, to which I have referred, the name given to the land is Kehelkotuwehitinawatta. The contention on behalf of the defendant is that the identity of a land for purposes of registration depends, not only on boundaries, but on the name of the land, and since Danketiyehena is the name given to the land so far back as 1856, it is contended that the folio in which the defendant's deed is registered is the proper one for this purpose. But I cannot agree that the name has much to do with the question of identity for purposes of registration. I quite understand the inconvenience that persons interested may experience when they wish to search the register with a view to finding out previous transactions unless the same name is carried forward, but the point is whether under the Ordinance identity of name is an essential detail. As far as I know, there is no case in which the contention on the defendant's behalf was upheld, and on principle I do not think the contention is sound. We have some guidance on this point in the recent judgment of the Privy Council in *Rajapakse v. Fernando*,¹ in which parties claiming adversely to each other had

¹ (1920) 21 N. L. R. 496.

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derived titles from one Thomas Carry, who held old deeds, on the strength of which he sold to one party, and obtained later Government grants, on the strength of which he transferred the lands to the other party. This passage occurs in the judgment of the Privy Council :—

“ A great part of the argument on behalf of the appellant was based on the fact that in the register of the grant of the land by Government to Thomas Carry, it is spoken of as the Ihalamedagoda estate, and in the registration of the deeds relating to the title of the appellant, it is registered as being in the village Ihalamedagoda, whereas in the deeds relating to the respondent's title it is spoken of as being in the village Medagoda. But the provisions of section 24 of the Ordinance turn on the identity of the lands, and not upon the identity of the nomenclature by which they are described.”

Section 24 referred to in that passage provides that when any property which shall have been once registered shall be subsequently sold, encumbered, or otherwise affected or dealt with, the deed or instrument purporting to transfer or otherwise deal with or affect such property shall state the volume and folio of the register in which such property has been previously registered. That section applies to this case as much as to the case which the Privy Council was dealing with. I think the Commissioner, in holding, as he did, that the registration of this particular land should have been according to the name by which the land was called in the old deed, is not right, and that his judgment in favour of the defendant on the ground of prior registration cannot be sustained.

The plaintiff is, I think, entitled to judgment as claimant, with damages as agreed on January 23, 1920, that is to say, Rs. 25 damages already incurred and further damages at Rs. 2 per mensem from the date of action till restoration to possession.

I therefore set aside the judgment appealed from, and direct that judgment be entered in favour of the plaintiff for the share of land claimed and for possession, with damages as above. The plaintiff is entitled to costs of this action and also of this appeal.

Set aside.