

1975 Present : Walgampaya, J., Sirimane, J., and Sharvananda, J.
REGISTRAR-GENERAL, Appellant, and T. SANGARAPILLAI,
Respondent

S. C. 148/72 (F)—D. C. Jaffna 1679/M.S.

Registration of Documents Ordinance—Whether document acknowledging receipt of moneys due on mortgage bond is registrable—Whether such instrument is a “release” or a “receipt”—Basis of jurisdiction of the District Court referred to in Section 38(2) of the said Ordinance

- (1) A document attested by a Notary acknowledging the receipt of moneys due by way of principal, interest and costs of action on a mortgage bond is not a “release” but a “receipt” registrable under the Registration of Documents Ordinance.
- (2) The District Court referred to in Section 38(2) of the Registration of Documents Ordinance is any District Court within the local limits of the jurisdiction of which the land or lands or movables were situated at the time the instrument affecting the same (and in respect of which the suit is instituted) was executed.

APPEAL from a judgment of the District Court, Jaffna.

C. Sithamparapillai, State Counsel, for the defendant-respondent-appellant.

K. Kanag-Iswaran for plaintiff-appellant-respondent.

Cur. adv. vult.

November 11, 1975. SIRIMANE, J.—

This is an action filed by the plaintiff who is a Notary under the provisions of section 38 (2) of the Registration of Documents Ordinance (Cap. 117) against the defendant who is the Registrar-General praying that the order of the latter refusing registration of a document submitted by the plaintiff be set aside and for an order directing that it be registered. The defendant filed answer denying the jurisdiction of the District Court of Jaffna (where this action was instituted) to hear this matter and justifying his refusal to register the document in question. The learned District Judge held against the defendant on the question of jurisdiction and against the plaintiff on the question of registration. Both the plaintiff and the defendant have appealed to this Court against the orders made by the learned District Judge.

The relevant facts are briefly as follows : on 25.6.69 the plaintiff attested the document (P7), with which we are concerned in this case, and the translation of which reads as follows :—

“ No. 9194

Registration refused

Jaffna 15 July 1969

Sgd. RL

Know all men by these presents that we Sabapathipillai Kandasamy and wife Theivanaipillai of Chulipuram have granted receipt unto Vely Sinnavy of Chulipuram to wit :—

We have received the sum of Rupees One Thousand five hundred (Rs. 1500.00) being the amount by way of principal and interests and costs of action due on mortgage bond No. 5086 dated 10th January, 1960 attested by this Notary which was put in suit in case No. MB/8229 of the District Court of Jaffna

whereby we mortgaged and hypothecated the land more fully described in the schedule as mortgage in full satisfaction.

The schedule of property

(Property is described here)

Sgd. S. Kandasamy

Sgd. K. Theivanapillai.

Witnesses :

- (1) Sgd. Illegibly.
- (2) Sgd. S. Nadarajah.

Sgd. T. Sangarapillai,
Notary Public.

(Then follows the usual attestation by the Notary).” This document bore a stamp of ten cents. When this document was sent for registration (with the registration fee of Rs. 2), the Registrar of Lands Jaffna by his letter dated 1.9.69 (P8) refused registration on the ground that it was not duly stamped as, “though worded as a deed of receipt the above mentioned document is in effect a deed of release of the land described in the schedule from the effects of mortgage bond No. 5086” and called for a stamp deficiency of Rs. 10.90 and a penalty of Rs. 10 before it could be registered. The plaintiff by his letter of 4.9.67 (P2) appealed to the defendant against the ruling of the Registrar of lands of Jaffna. The defendant by his letter of 18.11.69 (P3) stated that in his opinion “A receipt is not a registrable document” and invited the views of the plaintiff thereon. The plaintiff by his letter of 22.11.69 (P4) submitted that a receipt is a registrable instrument. The defendant then (having apparently accepted that a receipt in terms of P7 is registrable) inquired whether the plaintiff was willing to pay the deficiency and penalty as called for earlier by the Registrar of Lands Jaffna. The plaintiff declined to do so and the defendant by his letter dated 13.7.70 confirmed the order made by the Registrar of Lands Jaffna.

The questions that arise for decision are therefore whether the document (P7) is a “receipt” as claimed by the plaintiff or a “release” as claimed by the defendant and whether the District Court of Jaffna had jurisdiction to entertain this action under section 38 (2) of the Registration of Documents Ordinance (Cap. 117).

The question was also raised as to whether a “receipt” is a registrable document under the Registration of Documents Ordinance (Cap. 117) and learned State Counsel pointed out to proviso (x) of Section 8 of that Ordinance which excluded “any

receipt for the payment of money due under a mortgage or charge' from the definition of instruments affecting land contained in section 8. Section 8 merely defines "the instruments affecting land" which must be registered for the purpose of claiming priority under section 7 of that Ordinance. A receipt for the payment of money due on a mortgage (though it undoubtedly affects the mortgaged land by extinguishing the charge on it) has no relevance to the question of priority and the proviso referred to above saves such a receipt from being void as against any later registered documents. This does not mean that such a document cannot be registered. The First Schedule to this Ordinance itself in Part 1 item (1) lays down the registration fees as follows:—

"1 and every receipt or discharge— Where the amount of principal for which such instrument or receipt or discharge is given does not exceed Rs. 5,000 a fee of Rs. 2

Where it is indefinite, or it exceeds Rs. 5,000 a fee of Rs. 5 "

A receipt is therefore quite clearly a registrable instrument under the Registration of Documents Ordinance.

The next question is whether the document P7 above referred to is a "receipt" or a "release" as the former is chargeable with a stamp duty of only ten cents whilst the latter is chargeable with a stamp duty of Rs. 10. The stamp duty on a "receipt" is laid down in Schedule (A) Part (i) of the Stamp Ordinance (Cap. 247) in item 49 as six cents (amended to ten cents at the relevant time) and the stamp duty on a "release" is laid down in item 28 of the same Schedule and Part as Rs. 10. A "receipt" is defined in Section 94 of the Stamp Ordinance as follows:—

" "receipt" includes any note, memorandum or writing:—

- (a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received ;
or
- (b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt ; or
- (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged ; or
- (d) which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person. "

I think a reading of the document P7 shows quite clearly that it falls within the above definition of "receipt". Learned Counsel for the State however contends that it is a "release" as the lands that were mortgaged for securing the debt were released from the bond. I do not think that merely because the acknowledgment of the receipt of the principal debt incidently had the effect of the "charge" on the land ceasing to exist, such an acknowledgment can be construed to be a "release". In the case of a "receipt" the obligation ceases to exist by performance or fulfilment whereas in the case of a "release" it must be a release from an existing or unfulfilled obligation. A receipt is evidence of payment. Thus Wille on Principles of South African Law (5th Edition) refers to a termination of contracts by performance and by release. At pages 351-352 he says,

"Termination of Contracts"

A contractual obligation is discharged by performance of the obligation or by merger, set-off, release, novation, impossibility of performance, prescription, or insolvency and subsequent rehabilitation.

Where performance has been made by both parties, in the case of a bilateral contract, or by the debtor in the case of a unilateral contract, the contract is itself terminated or discharged.

Performance

Where performance has been duly made by the debtor in accordance with his duty as set out in the previous section, the obligation is discharged, and so are all accessory obligations, such as suretyships and pledges for the obligation."

and pages 355-356 :—

"Release"

Release or *acceptilatio* is a discharge or acquittance of an obligation made by the creditor either gratuitously or for value.

A release can be made expressly, by the agreement of the parties, or it may be made tacitly, for example, where the creditor hands over the instrument of debt to the debtor. In such a case, however, if the creditor denies that he intended to discharge the debt, the onus is on the debtor to prove such intention, since where there is a doubt, a waiver of rights, or a donation is not presumed. The gratuitous release of a debt, it must be noticed, constitutes a dona-

tion, with the consequence, inter alia, that if the value of the debt released is over £500, the release is binding only if it had been made with the formalities required by law.”

and

“One form of release is a promise by the creditor not to sue the debtor, (*Pactum de non petendo*), provided that the promise is unconditional.

The release by a creditor of one or two co-debtors discharges the other co-debtor only to the extent to which he would have had a claim for contribution against the former, unless the creditor intended in fact to discharge the obligation completely.”

In Kathiresu's Notarys' Manual 1921 Edition page 465 he cites,

“A deed of release is an instrument whereby one doth give or discharge the right or the action, which he may have or claim against another, or it is the conveyance of a right or interest which one hath in a thing to another who has the possession thereof or some estate therein.”

and continues,

“Releases are commonly stated to be of two sorts, namely:—(1) a form of conveyance by which an estate or interest in lands or tenements or in goods and chattels is transferred by one person to another person who has already a vested interest thereon, e.g., a release by a joint tenant to his co-tenant of an undivided share in land or by a mortgagor to the mortgagee of the equity of redemption; and (2) a discharge or renunciation by one person of some right of action or claim which he has against another, or against another's property. To these may be added a third kind of release which hardly falls under either of these heads, viz. the release of certain powers, which operates in effect as a disclaimer.”

I think it is therefore clear that merely because the document P7 which recorded the performance of the principal obligation to pay a debt also had by operation of law the effect of extinguishing the “charge” on the mortgage property and thus releasing it, in the ordinary sense of that word, from continuing to be a security for the debt any longer, that the document P7 is thereby converted into an instrument of “release” in the legal sense. As far as I am aware it has always been the practice for a very long time to stamp documents of this nature as

receipts. Such a receipt is often written on the mortgage bond itself and submitted for registration with the registration fee of Rs. 2/- or Rs. 5/- as the case may be. The document P7 was therefore correctly stamped as a "receipt" and the decision of the defendant that it should be stamped as a "release" cannot be upheld and must be set aside.

Learned State Counsel strenuously urged that in any case the District Court of Jaffna had no jurisdiction to entertain this suit and the plaintiff's action must therefore fail. He submitted that the Registration of Documents Ordinance when it refers to suits against a decision of the Registrar-General under Section 13(5) states,

"Any person aggrieved by a decision of the Registrar-General under this subsection may, within thirty days from the date of such decision being communicated to him, *institute in any District Court having jurisdiction* a suit against the Registrar-General praying for the variation of such decision."

In the subsequent provisions of the Ordinance where such a remedy is granted the sections refer to "a District Court" or "the District Court". The relevant section that applies in the instant case is Section 38(2) which reads :

"Any person aggrieved by the decision of the Registrar-General under this section may, within thirty days from the date of such decision being communicated to him, institute in the District Court a suit against the Registrar-General praying for the variation or reversal of the decision of the Registrar-General."

He submitted that here too it must be read to mean "District Court having jurisdiction" and not any District Court in the Island. He submitted that since jurisdiction is not defined in the Ordinance and since there is a reference to a "suit" which is the same as an "action" one must look to the Civil Procedure Code and the definition of a "cause of action" and where it arose to determine which District Court has jurisdiction. He submitted that since the decision of the Registrar-General which has given rise to this suit was made in Colombo and the office of the Registrar-General is situated in Colombo it was the District Court of Colombo that had jurisdiction both on the ground as to where the cause of action arose and the residence of the defendant. Learned Counsel for the plaintiff on the other hand submitted that there is no justification to fall back on the Civil Procedure Code and the concept of a "cause of

action", as there defined as the right to institute a suit was a statutory right conferred by Section 38 (2) of the Registration of Documents Ordinance itself. He further submitted that since the statute refers to the District Court, such a Court anywhere in the Island had jurisdiction to entertain such a suit.

I am unable to agree with learned State Counsel that the definition of a "cause of action" in the Civil Procedure Code must be resorted to in order to ascertain which District Court has jurisdiction. Since the right to institute a suit of this nature is conferred by the statute itself it is a statutory right and the definition of "action", "cause of action" and the jurisdiction of the Court as defined in the Civil Procedure Code are hardly applicable. I am also unable, to agree that merely because the Registrar-General's office is situate in Colombo all suits against him provided for in the Registration of Documents Ordinance must be instituted in the District Court of Colombo. If that were so it would mean that persons from such distant parts of the island like Jaffna, Batticaloa and Hambantota will have to institute their suits in Colombo at tremendous expense and inconvenience to themselves. I do not think that was ever the intention of the legislature when it enacted this Ordinance especially as Section 46 of the Ordinance even prevents the Court from granting costs against the Registrar-General even if a party succeeds in his suit against him. In any case such a construction must be avoided if effect is to be given to the new Administration of Justice Law No. 44 of 1973 which in Section 2 (c) gives one of the intentions of that law as "the elimination of unjustifiable expense and delay".

I am also unable to agree with learned Counsel for the plaintiff that any District Court in the Island has jurisdiction in matters under the Registration of Documents Ordinance as that would mean that a person residing in Batticaloa who applies for registration of an instrument to the Registrar of Lands, Jaffna, and is finally aggrieved by the decision of the Registrar-General refusing registration, can institute a suit in the District Court of Hambantota in respect of such a matter. That would be quite unrealistic and there would be no justification for the District Court of Hambantota to entertain a suit when the plaintiff is resident in Batticaloa, the defendant in Colombo and the instrument is sought to be registered in Jaffna. I however agree with learned State Counsel that where the Ordinance refers to "a District Court" or "the District Court" it means "any District Court having jurisdiction" as earlier stated in Section 13 (5) of the Ordinance. The term "jurisdiction" not having been defined by the Ordinance one must construe that

term having regard to the intent and purpose of the Ordinance in a way that would be both reasonable and convenient. It may be observed that the Registration of Old Deeds Ordinance (Cap. 119) provided that where one has failed to register an old deed under the previous law, it shall not be registered unless an application is made to a District Court. Section 4 (2) of that Ordinance provided that such application shall be made to *the District Court having jurisdiction in the place where the land or any of the lands to which the instrument relates is situated*. The Registration of Documents Ordinance (Cap. 117) with which we are here concerned, provides for the registration of instruments affecting land in Chapter III and for the registration of instruments affecting movable property (pledges, mortgages and bills of sale) in Chapter 4. The provisions of Chapter 5 are applicable to both types of instruments and the present suit has been filed under section 38 (2) in Chapter 5. Section 12 (1) requires the Registrar of Lands to maintain prescribed books for the registration of instruments affecting land allotting to each book a definite division of his province or district. Section 14 (1) requires that when such instruments are presented for registration that they be registered in the book allotted to the division in which the land affected by the instrument is situated. Similarly section 17 (b) provides that instruments affecting movables be registered in the office of the Registrar of Lands of the District in which such property is at the time the instrument is executed. Section 28 (1) provides that where an instrument affects lands or movable property situated in more districts than one, such instrument may be presented for registration to the Registrar of Lands of each of such districts. It would be seen from the foregoing that all instruments that are required or can be registered under this Ordinance have to be registered in books maintained for that purpose by different Registrars of Lands for the various districts or provinces where the property was situate at the time the instrument was executed. So that when such a Registrar of Lands refuses registration and that decision is confirmed by the Registrar-General it would undoubtedly be most reasonable and convenient to institute the suit referred to in Section 38(2) in that District Court within the limits of the jurisdiction of which the property affected by such instrument was situated at the time of its execution. The Registrar-General has his officers (The Registrars of Lands) in each district or province and it could therefore cause no inconvenience to him if such suits are instituted in the respective District Courts indicated above. Nor can the persons seeking registration have cause for complaint as the Court having jurisdiction will be a Court

where the property (immovable or movable) affected by the instrument was situate at the time such instrument was executed and consequently also the Court within the limits of which (normally) the office of the Registrar of Lands, where the books in which such instrument ought to have been registered, is situated. For these reasons I hold that the District Court referred to in the Registration of Documents Ordinance is any District Court within the local limits of the jurisdiction of which the land or lands or movables were situated at the time the instrument affecting the same (and in respect of which the suit is instituted) was executed. In view of the above the District Court of Jaffna had jurisdiction to entertain this suit.

In the course of argument my attention was drawn to sections 62, 63 and the following sections of the (now repealed) Courts Ordinance and the corresponding section 26 et seq. of the Administration of Justice Law No. 44 of 1973. It is to be noted that whilst the particular District Court competent to hear and determine Civil, criminal, revenue, matrimonial, insolvency and testamentary matters is designated, the District Court having jurisdiction to hear and determine statutory actions of the nature of suits under section 38 (2) of the Registration of Documents Ordinance is left undefined. Statutory actions cannot be equated to pleas, suits or actions in civil matters within the meaning of sections 62 and 63 of the Courts Ordinance. Indeed section 62 underlines the distinction between jurisdiction in a civil matter and jurisdiction in a statutory action as "matter in which jurisdiction is given to the District Court by law". One has to look within the framework of the particular law or statute for the District Court which is vested with jurisdiction to entertain such statutory actions. In that view of the matter, for the reasons already stated, in my view the District Court of Jaffna is the Court competent under the provisions of the Registration of Documents Ordinance (Cap 117) to hear and determine this action.

I would therefore dismiss the appeal of the defendant and allow the appeal of the plaintiff and set aside the order of the defendant Registrar-General, and direct that the document P7 be duly registered as a receipt. In view of the provisions of section 46 of the Registration of Documents Ordinance I make no order as to costs.

WALGAMPAYA, J.—I agree.

SHARVANANDA, J.—I agree.

Appeal of the defendant dismissed.

Appeal of the plaintiff allowed.