

MADDUMA BANDA v. APPURUWA.*

D. C., Ratnapura, 374.

1895.

September 22
and 26.

Ordinance No. 11 of 1878—Default of payment of grain tax—Effect of certificate of sale of land—Necessity for proving arrears of tax and sale of land in accordance with the Ordinance—Defective certificate—Bonâ fides of the sale—Evidence.

The effect of a certificate of sale signed by the Government Agent under section 22 of the Ordinance No. 11 of 1878, is not to dispense with proof that the grain duty was in arrear and that a sale took place in accordance with the Ordinance.

It should be proved that the defendant is liable to pay grain duty, grain commutation, or crop duty in respect of the land; that he made default in payment of the tax due for the year stated; that the property was sold to the plaintiff under the Ordinance; and that the sale was *bonâ fide*.

THE plaintiff sued the defendant for a declaration of title in regard to a field called Potuwila, which he alleged he had

* This case was followed by Layard, C.J., and Wendt, J., in D. C., Galle, 5,652, decided on the 9th June, 1903.—Ed.

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purchased on the 6th January, 1888, when put up for sale by the Government Agent of Ratnapura in consequence of the defendant being in default of payment of the annual commutation of the grain tax due for the year 1887.

The District Judge, Mr. K. McLeod, dismissed the plaintiff's action in these terms:—

“ Plaintiff is the arachchi of the village. He reported default of payment of tax, seized the land himself, and purchased it at the sale. Considering the previous litigation by plaintiff's father with defendant in respect of this very land, I think the present action is an ingenious trick of the plaintiff to obtain title to the land. There is no proof that defendants ever paid commutation tax for Potuwila. ”

The plaintiff appealed. The case came on for argument before Bonser, C.J., and Withers, J., on the 24th September, 1895.

Dornhorst, for appellant.

Bawa with de Saram, for respondent.

Cur. adv. vult.

26th September, 1895. BONSER, C.J.—

This is an action *rei vindicatio* to recover a piece of paddy land, which is said by the plaintiff to be called Potuwila, and of which he alleges he is the owner. He further alleges that on 6th January, 1888, this property was sold by the Government Agent under Ordinance No. 11 of 1878, in consequence of the default of the defendants to pay the grain tax for 1887, and that he became the purchaser at that sale, and that in October, 1890, a certificate was issued to him under Ordinance No. 11 of 1878 in respect of the land. He further alleges that he was in possession of the land, not, however, specifying the date when he entered into possession, and that in September, 1893, the defendants wrongfully took the crop.

The defendants put in an answer, which is somewhat obscure, but which I gather to mean that they have been in possession all along of this piece of land, which they say was never called Potuwila, but was part of a large field called Nillewatta; that they were never in arrears with their grain tax, and knew nothing about this alleged sale.

At the trial it appeared that the father of the plaintiff, who is the arachchi of the village, commenced an action in 1881 against these defendants, seeking to recover this very land, but that that action was dropped; that the consideration for the sale in 1888 was 28 cents, although the land was alleged by plaintiff's father, in his plaint in the former action, to be worth Rs. 240, and is now valued by plaintiff at Rs. 120. This inadequacy of consideration, coupled

with the fact that the plaintiff was at the time of the sale the arachchi of the village, throws some doubt on the *bonâ fides* of the transaction. The plaintiff admitted that the defendants were in possession, but said that he had put them in possession on the terms of their paying him a share of the produce, and that they had refused to give him his share. From this I draw the inference that the plaintiff has never been in possession, and that he is suing merely on the title conferred on him by the certificate of sale of 1890.

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The plaintiff relies on section 22 of Ordinance No. 11 of 1878, which provides that "if immovable property be sold for non-payment of annual commutation, crop commutation, or grain duty, a certificate substantially in form A in the schedule, signed by the Government Agent or Assistant Government Agent, shall vest the property sold in the purchaser free from all incumbrances." What then is the effect of such a certificate? Does the mere production of it dispense with proof that the duty was in arrear, and that a sale took place in accordance with the Ordinance? In my opinion that is not its effect. The vesting is expressed by the Ordinance to be subject to the condition that the property be sold for non-payment of duty, and I am inclined to think that its only effect is to dispense with the necessity of a notarial conveyance, and to provide that the purchaser shall get a title free from incumbrance. If it had been intended to provide that the certificate should be evidence, either *primâ facie* or conclusive, of the facts therein stated, it would have been easy to have so enacted. But it is not necessary to decide this point in the present case. The certificate, when produced, is defective, for it does not state for what the amount of 28 cents was due, whether for grain duty or annual commutation, or crop commutation, and being thus defective cannot have the effect claimed for it. The case should go back for a determination of the following issues:—(1) Were the defendants liable to pay grain duty, annual commutation, or crop duty in respect of this land? (2) Did they make default in payment of the tax for the year 1887? (3) Was the property sold to the plaintiff under Ordinance No. 11 of 1878? (4) If so, was such sale a *bonâ fide* sale?

If any of these issues are found in the negative, judgment will be for the defendants. The costs of the appeal will abide the result of the action.

WITHERS, J.—

I have had the advantage of hearing my Lord's judgment in this case.

I agree that the case should be remitted to the lower Court for the trial of the issues settled by the Chief Justice.