

1961

Present : Sansoni, J., and Tambiah, J.

H. N. LOGUS, Appellant, and P. H. LAWRENCE, Respondent

S. C. 253/59—D. C. Colombo, 8391/L

Deed relating to land—Registration in a new folio—Cross-references—Prescribed form must be strictly followed—Negligence of Registrar—Effect on priority of registration—Registration of Documents Ordinance (No. 14 of 1936). ss. 7 (1), 15 (1), 16, 49—Registration of Documents Regulations (Vol. 1 of Subsidiary Legislation, p. 547). s. 13 (3).

Where a new folio was opened for the purpose of registering a deed in respect of land the boundaries of which were exactly the same as those described in a registration in the previous folio, but the extent was stated differently—

Held, that when the Registrar opens a new folio for registering an instrument in terms of section 15 (1) of the Registration of Documents Ordinance read with section 13 (3) of the Registration of Documents Regulations, the cross-references made by him connecting the new folio with the earlier one must conform strictly to the prescribed form.

Held further, that where a deed is registered in the wrong folio on account of the negligence of either the Registrar or one of the parties, the document is deprived of the priority conferred on it by section 7 of the Registration of Documents Ordinance.

A PPEAL from a judgment of the District Court, Colombo.

S. W. Jayasuriya, with *N. R. D. Abeysinghe*, for the 1st Defendant-Appellant

F. A. Abeywardene, with *G. P. S. de Silva*, for the Plaintiff-Respondent.

Cur. adv. vult.

April 26, 1961. TAMBIAH, J.—

This is an action by the plaintiff-respondent for a declaration of title to 5/6 share of Lot G in Plan X. He claimed title to the land by deed P 2, dated 1. 6. 54. By this deed, five of the vendors transferred to the plaintiff the shares that would be allotted to them in the final partition decree in case No. D.C. 6459/P. The first defendant also claimed title to this land from the same source by deeds 1D1 and 1D2, dated 17. 7. 55. The only point of contest between the parties was whether the deeds 1D1 and 1D2 prevailed over the deed P2 by virtue of prior registration.

At the trial, it was common ground that the earliest deed relating to this land called Kadurugahawatte was registered in folio 12/61, marked P3. This folio has been connected by a series of cross-references to folios P3a to P3h. At the end of P3h, there is no entry to show that it is

continued or carried on any further. In 1920, a new folio, Volume 131, folio 106, marked P5, has been opened for the same land with the registration of a deed No. 6753 of 6th August 1920, which set out exactly the same boundaries of the land which is the subject-matter of this action, but the extent of which is stated differently. The plaintiff's deed, P2, is registered in folio P5a which is a continuation of folio P5. There is no connection between P5a and P3h (278/156). Thus, it is clear that the plaintiff's deed, P2, is not duly registered.

In 1930, another folio, Volume 289, P 147 (P4), has been opened for this land with the boundaries and extent exactly as in P5 but with no connection to the latter. The 1st defendant's deed is registered in folio P 4.

In P 4 (C 289/147), an endorsement has been made by the Registrar on 12. 6. 50, as follows :—

“ Notary quotes the land registered in 278/156 as the entire land of this. ”

In P3h (278/156), there is a similar endorsement made on the same day which reads thus :—

“ Notary quotes this as the entire land of this land in C 289/147. ”

It was submitted on the appellant's behalf that these endorsements are sufficient cross-references as required by the Registration of Documents Ordinance, (No. 14 of 1936), and that, therefore, the defendant's deeds were duly registered. It is the contention of the counsel for the respondents that the proper form of registration has not been followed, and therefore, the defendant's deed has not been duly registered.

In order to decide this matter, it is necessary to consider the relevant sections of the Registration of Documents Ordinance, and the regulations made thereunder. Section 7 (1) of the Ordinance states that “ an instrument shall, unless it is duly registered under this Chapter (i.e., Chapter III), be void as against all parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent instrument which is duly registered under this Chapter. ”

Section 15 (1) of the Ordinance enacts as follows :—

Every instrument presented for registration shall be registered in the book allotted to the division *in which* the land affected by the instrument is situated and in, or in continuation of, the folio in which the first registered instrument affecting the same land is registered ;
Provided that—

- (a) an instrument may, if the Registrar thinks fit, be entered in a new folio, cross-references being entered in the prescribed manner so as to connect the registration with any previous registration affecting the same land or any part thereof.

By virtue of the powers conferred by Section 49 of the Registration of Documents Ordinance, regulations have been framed by the Legislature providing the form to be used when cross-references are made. Section 13 (3) of the Registration of Documents Regulations (vide *Subsidiary Legislation of Ceylon Volume 1, page 547*) states as follows :—

If, at the time of registration of an instrument affecting land, the registrar finds that the description of the land affected thereby differs in any respect from the description of the same land appearing in the register by reason of the prior registration of another instrument affecting the same land, he shall, if he is satisfied as to the identity of the land, enter the later instrument in the same folio as the earlier instrument, and shall make a note of the differences in the remarks column of the entry relating to the later instrument : Provided that if he is doubtful as to the identity of the land he *shall register* the later instrument on a new folio, but shall connect the two folios by cross-references, thus :—

“ See Vol. fol. for a similar property ”.

The Legislature, by using the words “ shall register ” has, in unmistakable language, required the Registrar to use only a particular form. These salutary provisions were enacted in order to remove all uncertainties resulting from persons functioning as registering officers using any expression of their choice. It is of the utmost importance that a person who searches the Register should be in a position to refer to the earlier and later folios of a particular folio which he is examining. Any laxity in the use of language by Registrars may mislead those who examine title and may cause them irreparable loss.

In order to avoid these difficulties the Legislature has specifically laid down the manner in which the Registrar should enter cross-references. When a statute prescribes that an act shall be done in a particular manner, the prescribed method should be strictly followed (cf. per Basnayake, J. in *Sivagurunathan v. Doresamy*¹).

In the instant case, the Registrar has failed to follow the form set out above, and has not even made an entry in his own words. He merely recites what the Notary is alleged to have written to him. The entry referred to is not an act of registration. It may be that a person who examined this folio may have formed the impression that this was only an observation by the Notary who had sent the particulars and the Registrar has not made any cross-entry within the meaning of section 15 (1) of the Registration of Documents Ordinance.

It was also urged by the counsel for the appellant that, in view of the above references, one would not have been misled. I have already dealt with this matter. The counsel for the appellant further contended that the appellant should not suffer for the Registrar's negligence. Although the Registration of Documents Ordinance provides for relief

¹ (1951) 52 N. L. R. 207 at 210.

where there is fraud or collusion in obtaining the subsequent instrument (vide Section 7 (2) of the Registration of Documents Ordinance), nevertheless no statutory provision has been made, granting any relief, where the deed is registered in the wrong folio due to the negligence of the Registrar. The judgment of Wood Renton, A.C.J., in the case of *Cornelis v. Abey-singhe*¹, cited by the counsel for the appellant, has no application to the facts of this case. This judgment was given before sections 15 and 16 of the Ordinance were enacted (see per Howard, C.J. in *De Silva v. Weerappa Chettiar*)². It is however now clear that where a deed is registered in the wrong folio, due to negligence (see *Punchiappahamy v. Pelis Appu*)³ whether of the Registrar (see *De Silva v. Weerappa Chettiar*)⁴ or of one of the parties (see *Mohammadu Sali v. Isa Natchia et al.*)⁵, the document is deprived of the priority conferred on it by section 7 of the Ordinance.

In this case, it is a matter of regret that the Registrar to whom the correct information has been sent by the Notary who executed the deeds 1D1 and 1D2, has not registered them in the correct folio. I am of opinion that the learned District Judge was correct in his finding that the deeds 1D1 and 1D2 have not been duly registered.

Accordingly, I dismiss the appeal with costs in both Courts.

SANSONI, J.—I agree.

Appeal dismissed.

