

1901.
August 5, 6,
and 12.

KIRI BANDA v. BOOTH.

D. C., Ratnapura, 948.

Sannas—What are appurtenances of paddy lands—Meaning of *wal pita*—Forest lands *inter regalia* under the Kandyan Kings—Conveyable by special grant.

LAWRIE, A.C.J.—The appurtenances of a field are the houses and gardens of the landowner and his tenants, the threshing floor, the wooded lands surrounding the field and acting as a protecting belt or hedge, also an extent of high land for chena cultivation, proportionate to the extent of the fields. In my opinion, forests do not pass under a clause of appurtenances.

Among the Kandyans, forests were known as *mukalana* and not *wal pita* (which is an expression for thickets and open lands).

Forests were *inter regalia* under the Kandyan Kings and could not belong to subjects except by special grant.

THIS was a reference under sections 5 and 6 of the Ordinance No. 1 of 1897 to the District Court of Ratnapura by the Government Agent of the Province of Sabaragamuwa.

The Government Agent informed the Court that, after notice given and published in respect of a land called Kaludiyawela-mukalana, containing in extent 108 acres, a claim was made to him by one Kiri Banda, and that upon due inquiry he did not admit the said claim or enter into any agreement with the said Kiri Banda in respect thereof. He therefore referred the said claim to the District Court.

The claimant appeared before the District Court and stated that the said land was part and parcel of the *nindagama* called Yayinne; that that village was granted by the *sannas* dated the year of Saka 1578 (A.C. 1656) to Wickremesingha Terunnehe Pannave Dissawa and his descendants, and that plaintiff, a descendant of the said Dissawa, was entitled to the said village and to the allotment of land mentioned in the reference.

The *sannas*, as translated for the Court below, ran as follows:—
“ Command given.

“ Whereas the Satarawaram Deities bear witness to the valiant
“ act performed by Yayinne Wickremesingha Terunnehe, who
“ held the office of Dissawa of Pannave on the day our Garrison
“ was in Colombo; and whereas he has satisfactorily rendered
“ personal services to the King (in the Royal Palace). **this** *sannas*

1901.

August 5, 6,
and 12.

“ is granted by Royal command at Colombo on Sunday, the
 “ tenth day after the new moon of the month of Esale (July)
 “ Durmuklu year 1578 of the era of Saka, in order that the following
 “ may be undisturbedly possessed as paraveni property by the
 “ children and grandchildren and their descendants of this
 “ individual, so long as the sun and moon exist, viz., 9 amu-
 “ nams extent lying within the four boundaries of Yayinnegama,
 “ situated in Atakalan korale of the Sabaragamuwa Province, and
 “ bounded on the east by Hulanpitateenne, south by Dalukgala,
 “ west by Miriyandola, and on the north by We-ganga. Also 30
 “ amunams extent from Thoré, and also 3 amunams extent from
 “ Eluwane, together with the houses, gardens, trees, high lands,
 “ and jungle ranges appertaining thereto.
 “ The purport of the said Royal command is the same as this
 “ granted by Royal Order.”

The contentjon of the Government Agent was that the sannas did not specify any forest, nor did it appear to have been the intention of the grantor to bestow any forest upon the Dissawa; that the boundaries recited are only those of the village Yayinne, within which 9 amunams of mud lands, together with gardens and the usual undefined appurtenances of high land, were granted.

Witnesses were called, both on behalf of the claimant and the Government Agent, including Messrs. H. C. P. Bell and B. Gunsekera Mudaliyar, who were considered expert witnesses, who gave it as their opinion, based upon a study of a large number of sannasas, that sannasas were of two kinds, viz., those which granted whole villages and those which granted only limited areas of land; that the expressions used in these two classes of sannasas were entirely different; that according to the plain grammatical and literal interpretation of the sannas, the sannas conveyed only 9 amunams of mud land in the village Yayinne, with henas, gardens, &c., appertaining thereto; that the peculiar expressions used in this sannas assigned it to that class of sannas which dealt with small parts of a village; that if a whole village were granted, the sannas would have the words “ within these “ four boundaries, the high and low lands, houses, gardens, trees, “ &c., included, the whole village,” &c., but in the present sannas the phraseology used was different.

The District Judge criticised the views of the expert witnesses, and held that the claimant's witnesses had proved that the inhabitants of the village had rendered service to the original grantor on the understanding that the sannas conferred on him the whole of the village as a nindagama, and that the same

1901.
August 5, 6,
and 12.
—

understanding had continued for 350 years. He also found that the claimant, his friends, and descendants had for generations cut timber from the forest, and that a share of the forest produce had been customarily given to the claimant. He therefore gave judgment for the plaintiff.

The Government Agent appealed.

Layard, A.-G. (with him *Fernando, C. C.*), appeared for appellant.
Sampayo and *Walter Pereira*, for respondent.

Cur adv. vult.

12th August, 1902. LAWRIE, A.C.J.—

It is admitted that the sannas is genuine, that the plaintiff is the representative of the Crown grantee, and that the forest lies within the boundaries of the village Yayinne.

Did the sannas grant the whole village Yayinne, or only a tract of fields of 9 amunams extent with appurtenances?

The translation attached to the plaint was accepted as correct. The grant runs: "In order that the following be undisturbedly possessed as paraveni by the children and grandchildren and their descendants of (Yayinne Wickremesingha Terunnehe).....that is to say, 9 amunams extent lying within the four boundaries of Yayinnegama, situated at the Atakalan korale of the Sabaragamuwa Province, and bounded on the east by the Hulanpitanne, south by Dalukgala, west by Miriyandola, north by We-ganga."

It is admitted that these are the boundaries, not of the 9 amunams, but of the whole village. Between the 9 amunams of field and Dalukgala, the southern boundary, lies a large tract of forest. In my opinion the enumeration of the boundaries is merely descriptive of the village within which the 9 amunams lies. If this were a sale of land by an English deed, it would not be possible to contend that all the lands within the boundaries of the village were sold. I think it would be conceded that no more passed than 9 amunams lying in the village.

The translation given by the learned District Judge in the judgment makes it even clearer that only the 9 amunams were conveyed (p. 143): "Out of Sabaragamuwa dissavani the boundaries of Yayinne village, situated in Atakalan korale, (are) on the east Hulanpitanne, and on the south Dalukgala, and on the west Miriyandola, and on the north We-ganga, the 9 amunams extent that fall within these boundaries are granted," &c.

If there were more than 9 amunams of field land in Yayinne, I think the excess did not pass under the sannas. I cannot read it as a grant of the whole village.

Are the words conveying appurtenances capable of including this "forest"?

1901.
August 5, 6,
and 12.
—
LAWRIE.
A.C.J.

The learned District Judge translates the clause, "including the houses, gardens, trees, high lands, forest lands, and meadows appertaining thereto." The translation in the plaint runs "together with the houses, gardens, trees, and jungle ranges appertaining thereto." Mr. Bell translates it, "houses, gardens, plantations, high and low lands, and jungle appertaining thereto." Mr. Bell afterwards corrected this, explaining that "low" lands were not mentioned. The important words are *wal pita*. The District Judge translates them "forest lands and meadows." The Interpreter of the District Court of Kalutara makes these to mean "jungle ranges." Mr. Bell translates them as "jungle." Another witness, Gunasekera Mudaliyar, says that *wal* is "forest" and *pita* is "open land." Clough's Dictionary translates *wal*, "jungle, wood, thicket, grass." Among the Kandyan forest is "mukalana," and I think that the most reliable evidence is that *wal* or *wal pita* does not mean a forest. Forests were *inter regalia*, and could belong to subjects only by special grant. I think it was not consistent with Kandyan Law and custom to recognize forests as appurtenances of fields.

The appurtenances of a field were the houses and gardens of the landowner and his tenants, the threshing floor, the wooded lands surrounding the field and acting as a protecting belt or hedge, also an extent of high land for chena cultivation, proportionate to the extent of the fields. In my opinion, forests did not pass under a clause of appurtenances.

If this clause in the sannas included forest, is there evidence that this particular forest was granted? It is not mentioned by name. It is not pretended that this or any forest was conveyed as the appurtenance of the Thoré or of Eluwane fields. Why should it be held that this mukalana was an appurtenance of the Yayinne fields? Merely, I understand, because the forest is in Yayinne, and that seems to carry us back again to the question whether the whole of Yayinne was granted. If it was not (as is my opinion) is it possible to bring this forest in as an appurtenance? I think not.

I come to the conclusion that this forest is presumed to be the property of the Crown, and that the plaintiff has not shown anything to the contrary.

I set aside the judgment of the Court below and dismiss the plaintiff's action.

MONCREIFF, J.—I agree.

The original of the following important letter of Mr. S. Sawers on sannasas is preserved in the Badulla Kachcheri.—ED.

In the Board of Commissioners.

Kandy, 26th August, 1826.

To Captain Fletcher. Agent of Government, Aliputo.

SIR,—WITH reference to your letter of the 10th ultimo, I am sorry to observe that my reply has been too long delayed owing to the multiplicity of business I have had to attend to. But, whatever may have been your decision in the case, the party against whom you have decided may have remedy by appeal, if such be necessary.

In respect to the virtue of Royal sannasas in establishing rights to property, it appears that even under the King's Government they were not considered absolute against rights founded in justice and which the terms of the sannas went to violate. Indeed, this was a natural consequence of the loose manner in which they were granted.

The granting of a sannas was an act of grace on the part of the King, and the favour was obtained either by the performance of some distinguished service, or, and that most commonly, by gifts given in the first instance to Chiefs in power, and ultimately to the King himself.

It was the common practice of the individual in whose name the sannas was granted, not only to include all the lands of his family, but the lands to which the family pretended to have claims, and if the party possessing such lands was ignorant of the fact of the lands being included, or were not of sufficient influence or had not the means of paying the necessary *bootal soorotoos* (betal leaf rolls) to prevent it, a law suit generally ensued afterwards, when the case was heard and decided upon its own merits without reference to the sannas. In fact, the mention of an estate in a sannas was of no validity without possession, unless the estate had been forfeited to the Crown or had been Crown lands for some time prior to the granting of the sannas. In such cases, the title which the sannas conferred could not be disputed. It was not upon the granting of a new estate only that a Royal sannas was given by the King. As it was considered an honour for a family to be possessed of a Royal sannas for their lands, and a special honour to the individual of the family in whose name it was granted (as it carried his memory down to posterity as a person who had been distinguished by Royal favour), it was a common practice for such fortunate individuals to obtain a sannas for the lands of their family which had been previously in their possession for many generations, and the object in including all other lands of which they were not at the moment possessed was either to support some future attempt that might be made to wrest the lands from their proper owners, or to set up a claim to them in the event of their becoming *porapadoo*.

I need hardly add that for all these reasons we do not now hold that a land being mentioned in a Royal sannas is by any means conclusive as to the right of the person to the land in whose name the sannas was granted.

I am, &c.

S. SAWERS,
Judicial Commr.
