

1913.

*Present: Pereira J. and De Sampayo A.J.*BERNARD *v.* FERNANDO *et al.*

134—D. C. Negombo, 9,003.

Partition decree—Sale of an undivided share by party who was allotted divided lots by decree—Subsequent sale to another of lots allotted under decree—Prior registration.

Partition decrees are conclusive by their own inherent virtue, and do not depend for their final validity upon anything which the parties may or may not afterwards do. They are not, like other decrees affecting land, merely declaratory of the existing rights of the parties *inter se*: they create a new title in the parties absolutely good against all other persons whomsoever.

Under a partition decree dated 1905, A was allotted two divided lots in lieu of his undivided share. In 1907 and 1909 he transferred his undivided share of the entire land to B, who was a party to the partition action. In 1912 A sold his divided lots to C. The deeds in favour of B were registered in 1907 and 1909; the partition decree was not registered till after the deeds in favour of C.

Held, that C's title was superior, and that the prior registration of B's deeds did not give B a title to an undivided share of the entire land.

THE facts appear from the judgment.

A. St. V. Jayewardene, for the defendants, appellants.—The defendants get an undivided one-fifth share by deed executed and registered before the partition decree was registered. As against the plaintiff, who claims under the partition decree, the deeds in favour of the defendants must prevail by prior registration. [De Sampayo A.J.—Between what deeds is the competition?] Between the partition decree and the deeds in favour of defendants from Maximiano and Graciano. [De Sampayo A.J.—What is the value of registration in a case like this, as the partition decree wipes out all previous titles?] Every decree has to be registered under Ordinance No. 14 of 1891.

H. A. Jayewardene, for the plaintiff, respondent.—By the partition decree Maximiano and Graciano lost all their undivided rights, and they had no right after the decree to sell undivided lots.

It is not necessary to register a partition decree, as all previous titles are wiped out by the decree. The Registration Ordinance cannot over-ride the Partition Ordinance, and take away the binding effect which the Ordinance gives to final decrees in partition cases.

A. St. V. Jayewardene, in reply.

Cur. adv. vult.

June 16, 1913. DE SAMPAYO A.J.—

1913.

*Bernard v.
Fernando*

This is a contest relating to two lots of land marked A and D in the plan referred to in the case. These lots were part of a larger land, which was the subject of a previous partition action, and were allotted by the decree in that action to Maximiano Costa and Graciano *alias* Martino Costa in respect of an undivided one-fifth share to which they were entitled in the entire land. The plaintiff, upon deeds dated April 22 and 23, 1912, purchased these lots from Maximiano and Graciano, and now sues the defendants in ejectment. The partition decree was dated January 30, 1905. The first defendant in this case was plaintiff in the partition action, and had other portions allotted to him in the partition, and thus he was quite aware that Maximiano and Graciano had, since the partition, only title to the divided portions A and D, but for some inexplicable reason the defendants, upon deeds dated December 6, 1907, and March 17, 1909, purchased from Maximiano and Graciano an undivided one-fifth share of the entire land described as the share to which the vendors were entitled by inheritance. In their answer, however, they plead the partition decree and their vendors' right thereunder to the lots A and D, and claim these lots by virtue of the deeds in their favour. It is, of course, obvious that, having purchased an undivided share in the entirety, they cannot establish title to the divided lots A and D, and so far as that is concerned, the judgment of the District Judge in favour of the plaintiff is right. But it is contended in appeal that they are entitled as against the plaintiff to an undivided one-fifth share in the entirety of the original land. This argument is based on a matter of registration. The defendants' deeds were registered on December 9, 1907, and March 23, 1909, respectively, and the partition decree allotting A and D to Maximiano and Graciano was not registered till April 25, 1912. It is argued on behalf of the defendants that by reason of the provisions of the Registration Ordinance the decree is null and void as against the deeds in their favour. I do not think that sections 16 and 17 of the Registration Ordinance apply to partition decrees to the same extent as to other judgments or orders of Court. Partition decrees are conclusive by their own inherent virtue, and do not depend for their final validity upon anything which the parties may or may not afterwards do. They are not, like other decrees affecting land, merely declaratory of the existing rights of the parties *inter se*. They create a new title in the parties absolutely good against all other persons whomsoever. But if the argument in this case is sound, they may be wholly nullified, immediately after they are entered, by means of the Registration Ordinance. For if the parties to the action are for any reason dissatisfied with the decree, they have only simply to ignore it and dispose of their original undivided shares in the entire land to third persons and have the transfers registered. It cannot be supposed that the Registration

1913.

DE SAMPAYO
A.J.*Bernard v.
Fernando*

Ordinance was intended thus to defeat the whole object of legislation with regard to partitioning of lands. Moreover, a judgment or order unless registered is, by section 17 of the Registration Ordinance, declared to be void only against persons claiming "an adverse interest." Now, as the result of the partition decree, all previous titles were wholly extinguished by operation of law, and the only foundation for Maximiano and Graciano's title to any interest in the land thereafter was the decree itself. This being so, I do not see that these men could, by any process, create an interest adverse to themselves. The defendants' derivative title would, according to the argument, be adverse to its own origin, which is not possible. The truth, I think, is that the expression "adverse interest" refers only to cases where two persons claim interests traceable to the same origin. In this connection I may add that the defendants lastly claimed to be entitled to an undivided one-fifth share in the lots A and D. If registration applied in this case at all, the documents that might have come into competition with regard to this restricted claim would have been the defendants' deeds and the plaintiff's deeds. As a matter of fact, however, no question of registration arises as regards such one-fifth shares, because the defendants' deeds are prior in date both of execution and registration. Is it therefore unnecessary to deal with another question of registration as regards such one-fifth share, because deed were registered in the proper folio. It seems to me the only question is whether the defendants' deeds, which are for an undivided share of the whole original land, are sufficient to give them a similar undivided share in the divided lots A and D, to which alone their vendors were at that date entitled, and I think they are. In my opinion the judgment appealed from should be varied by declaring the plaintiff entitled only to an undivided four-fifths share of the lots A and D and putting him in possession thereof. The judgment is otherwise affirmed. As the appellants have only partially succeeded, I think there should be no order as to costs of appeal.

PEREIRA J.—I agree.

Varied.