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[FULL BENCH.]

Present : Lascelles C.J., Middleton J., and Wood Renton J.ASERAPPA v. WEERATUNGA *et al.*

174—D. C. Colombo, 31,102.

Registration—Priority—Two competing Fiscal's conveyances—Prior registration of prior deed—Does section 17 of the Registration Ordinance apply?—Fraud—Knowledge of a previous deed.

Plaintiff and added defendant claimed the land in dispute under two competing Fiscal's conveyances. Plaintiff's conveyance was prior in point both of date of execution and registration; but as regards date of seizure and sale, the priority was with the added defendant.

Held, that the added defendant had a superior title.

Mere notice of a previous deed is not enough to deprive a person who has registered his deed of the benefit of registration.

THE facts are set out in the judgment of Middleton J. as follows :—

“ This was an action *rei vindicatio* for a house and premises in Pickering's road called ‘ Floral Cottage,’ or ‘ Ratna Villa,’ by the plaintiff, who based his title on a Fiscal's conveyance dated April 16, 1908, and registered on April 22, 1908. The defendant was the lessee under one Muttu Carpen, who was added as a party to the action. The added defendant based his title on a Fiscal's conveyance dated May 26, 1908, and registered on June 13, 1908. It was admitted that it was the life interest of one Sophia Ratnaike in the property in question which was the subject of the action, and that the life interest was seized on writ in D. C. Colombo, 23,669, issued by the added defendant on February 12, 1907, the seizure being registered on February 18, 1907, and was sold on June 10, 1907, and purchased by the added defendant for Rs. 600; that this sale was confirmed on August 16, 1907, and a Fiscal's transfer issued on May 25, 1908, registered on June 13, 1908. It was also admitted that the plaintiff issued writ against Sophia Ratnaike in C. R. Colombo, 3,576, on January 24, 1907, and seized the life interest on September 19, 1907, and that he made a second seizure on December 16, 1907, registered on December 18, 1907, and that it was sold on February 5, 1908. That the plaintiff himself purchased the life interest for Rs. 10, and that a Fiscal's conveyance was issued to him on April 16, 1908, and registered on April 22, 1908.”

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The learned District Judge (E. W. Jayewardene, Esq.) found that the plaintiff was aware at the time of the purchase that the added defendant had previously purchased the premises, and held that the plaintiff was precluded by notice of the previous purchase from obtaining priority through the medium of the Registration Ordinance.

The plaintiff appealed.

A. St. V. Jayewardene (with him *Tisseveresinghe*), for the appellant.—The mere fact that the plaintiff was aware at the time of the purchase that the added defendant had previously purchased the premises is not enough to deprive the plaintiff of the benefit of prior registration. Counsel cited *Ramanathan* (1877), 198 ; *Siripana v. Tikiria* ;¹ *Sennaiya Chetty v. Appuhamy* ;² 19—C. R. Jaffna, 4,230 A ;³ *Kirihamy v. Kiri Banda* ;⁴ *Silva v. Sarah Hamy*.⁵ In *Crowley v. Bergtheil*⁶ it was proved that the document on which the claim of priority was based were obtained by misrepresentation and fraud.

Bawa, for added defendant, respondent.—The judgment cannot be supported on the authorities relied on by the District Judge. But the question of priority by registration does not arise here. The deed of the plaintiff was earlier in point of date of execution and registration. Counsel referred to *Silva v. Tissera* ;⁷ *Saravanamuttu v. Maruthappa*.⁸

Jayewardene, in reply.—The added defendant must take either date of sale or conveyance as the crucial date. If our conveyance was first, we get a good title, and no question of registration comes in ; if the date of sale be taken as the crucial date, we gain priority by registration. *Saravanamuttu v. Maruthappa*⁸ was decided without reference to section 238, Civil Procedure Code, and *Silva v. Tissera*⁷ was a decision before the Civil Procedure Code came into operation. It is submitted that those decisions are incorrect.

The case was reserved for a Full Bench.

A. St. V. Jayewardene, for the plaintiff, appellant.—The added defendant's deed must be deemed to be a prior deed by virtue of section 289 of the Civil Procedure Code ; the conveyance relates back to the date of the sale. The Registration Ordinance does, therefore, apply to this case. Counsel referred to *Silva v. Gomes*⁹ and *Trowell v. Pate*,¹⁰ *Law v. Mitter*.¹¹ There is nothing to prevent the Fiscal selling a land twice over under two decrees. See *Law v. Mitter*.¹¹

¹ (1878) 1 S. C. C. 84.

² (1885) 7 S. C. C. 111.

³ S. C. Min., April 11, 1905.

⁴ (1911) 14 N. L. R. 284.

⁵ (1883) *Wendt* 383.

⁶ (1899) A. C. 399.

⁷ (1890) 9 S. C. C. 92.

⁸ (1899) 4 N. L. R. 27.

⁹ (1909) 1 Cw. L. R. 96.

¹⁰ (1911) 5 *Leader L. R.* 40.

¹¹ (1888) 15 *Cal.* 202.

*Silva v. Tissera*¹ was decided before the Civil Procedure Code. *Suravanamuttu v. Maruthappa*² does not refer to the provisions of section 238 of the Civil Procedure Code.

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If added defendant's deed is not to be deemed a prior deed in date, then the appellant's deed being earlier in date must prevail. Otherwise a subsequent purchaser of a land previously sold by the Fiscal would never get a good title, however vigilant he may be, for if the first purchaser obtains his deed at any time after the execution of the second deed he would wipe out the rights of the second purchaser, unless the latter has acquired a title by prescription.

Bawa, for the added defendant, respondent.—The only case that has been cited against the respondent is *Trowell v. Pate*,³ which is a single-judge case. This case does not refer to *Silva v. Tissera*¹ or *Kadirawelpulle v. Pina*.⁴ It proceeds on *Silva v. Gomes*⁵ and *Peris v. Perera*,⁶ where the facts are different.

Section 289 of the Civil Procedure Code does not confer any priority of date to the deed ; it only vests the title on the purchaser from the date of sale. Plaintiff's deed is a subsequent prior deed, and cannot gain any benefit by prior registration. The plaintiff bought only the right, title, and interest of the judgment-debtor ; this right was defeasible on the execution of the conveyance in favour of the first purchaser, the added defendant.

Counsel referred to *Silva v. Hendric Appu*,⁷ *Silva v. Silva*.⁸

A. St. V. Jayewardene, in reply.—Section 238 refers only to private sales, and not to alienations by the Fiscal. Counsel referred to *Kuda Banda v. Dingiri Amma*,⁹ *Silva v. Gimarah*.¹⁰

Cur. adv. vult.

July 26, 1911. LASCELLES C.J.—

It is not necessary to recapitulate the facts of this case, which are set out in the judgment of my brother Wood Renton, which I have had the advantage of seeing.

The contest is between two Fiscal's conveyances, of which the plaintiff's is prior in point both of date and registration ; but as regards date of seizure and sale, the priority is with the added defendant. The learned District Judge disposed of the question of registration on the ground of notice. He found that the plaintiff was aware at the time of the purchase that the added defendant had previously purchased the premises, and held that the plaintiff was precluded by notice of the previous purchase from obtaining priority through the medium of the Registration Ordinance. It was admitted in argument that this ruling could not be supported, and

¹ (1890) 9 S. C. C. 92.

² (1899) 4 N. L. R. 27.

³ (1911) 5 Leader L. R. 40.

⁴ (1889) 9 S. C. C. 36.

⁵ (1909) 1 Cur. L. R. 96.

⁶ (1906) 10 N. L. R. 33.

⁷ (1895) 1 N. L. R. 13.

⁸ (1895) 1 N. L. R. 28.

⁹ (1911) 14 N. L. R. 145.

¹⁰ (1903) 7 N. L. R. 135.

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I only refer to the point because it may be useful to state that I regard the principle that mere notice of a previous deed is not enough to deprive a person who has registered his deed of the benefit of registration to be as well settled as it is possible for any principle of law to be established by judicial decision. From D. C. Kandy, 67,295,¹ decided in 1877, down to D. C. Kurunegala, 3,971,² decided in 1911, the current of judicial decision is almost unbroken. It has been deliberately decided after the fullest consideration that the equitable principles laid down in *Le Neve v. Le Neve*³ are not applicable to the construction of section 17 of the Land Registration Ordinance of 1891. The crucial point in the case is whether, apart from any question of notice, the plaintiff's deed is entitled to the benefit of registration. Section 17 of the Land Registration Ordinance enacts that, subject to certain limitations, an earlier unregistered instrument shall be deemed void as against a subsequent registered instrument.

The added defendant contends that the plaintiff's deed can obtain no advantage from registration, inasmuch as it is not a "subsequent deed," but is prior to the plaintiff's deed both as regards date of execution and registration. To this the plaintiff replies that as the added defendant, by virtue of section 289, is deemed to have been vested with the legal estate from the time of the sale, the added defendant's deed, as regards its operative effect, is prior to his own, and that the plaintiff's deed is therefore a subsequent deed, which has gained priority by means of registration. The question thus is, whether the benefit of registration under section 17 of "The Land Registration Ordinance, 1891," extends to deeds which are not "subsequent deeds" as regards date of execution, but are in a similar position to a subsequent deed owing to the operation of section 289 of the Civil Procedure Code on the competing deed.

In the argument we were referred to numerous authorities. There is, I think, no case in which the question now under discussion has been formulated, but the general result of the authorities is in favour of the view that the expression "subsequent deed" in section 17 of "The Land Registration Ordinance, 1891," means a deed which is subsequent as regards date of execution. I have come to the conclusion that this is the correct view, and that the benefit of registration cannot be extended to deeds which are prior in date to the competing deed, but are placed in an inferior position by the operation of section 289 of the Civil Procedure Code. Section 289 of the Civil Procedure Code provides, as a matter of civil procedure, that a grantee under a Fiscal's conveyance, when the sale is confirmed and the conveyance has been executed, shall be deemed to have been vested with the legal estate from the time of the sale, but the provision cannot, I think, affect the construction of section 17 of

¹ *Ramanathan (1877) 198.*² *(1911) 14 N. L. R. 284*³ *2 Amb. 336.*

“The Land Registration Ordinance, 1891.” The result is that the plaintiff’s deed has obtained no advantage by registration, and the added defendant, by virtue of section 289 of the Civil Procedure Code, has the superior title.

The appeal must therefore be dismissed with costs.

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MIDDLETON J.—

His Lordship set out the facts, and continued :—

It will thus be seen that the plaintiff’s Fiscal’s conveyance bearing date April 16, 1908, and registered April 22, 1908, was prior, not subsequent, to the added defendant’s Fiscal’s conveyance bearing date May 25, 1908, and registered June 13, 1908. It was contended, however, for the plaintiff that under section 289 of the Civil Procedure Code his conveyance related back to the date of the sale on February 5, 1908, and so was subsequent to the added defendant’s conveyance, which related back to the sale to him on June 10, 1907.

This doctrine of relating back under that section seems to me, however, to apply to the question of the vesting of the legal estate upon a sale in execution, and would not affect the date of a deed the priority of which it was sought to establish under the terms of section 17 of Ordinance No. 14 of 1891. The right, title, and interest of the judgment-debtor is not deemed to pass under section 289 until the confirmation of the sale and the Fiscal’s conveyance is executed, when immediately the purchaser is vested with the right, title, and interest from the date of the sale. Under section 17 of the Registration Ordinance, No. 14 of 1891, it is the registered deed subsequent in date to the unregistered deed of a prior date which obtains the preferential priority in effect. Section 289 gives no priority of date to the deed, but an antecedent effect to the title conveyed by the deed. If, then, the Registration Ordinance is to be applied to this question, the plaintiff’s deed, being on April 16, is prior, and not subsequent, in date to the defendant’s, on May 26, 1908, and he cannot claim that his registration of it will avoid the added defendant’s deed of conveyance. In the case of *Silva v. Sarah Hamy*¹ the Registration Ordinance was held to prevail, the conveyance to the plaintiff being subsequent in date and registered as against the defendant’s prior and unregistered conveyance. The converse contemplated by Clarence J. is the case here. When the Fiscal purported to sell the life interest in question here to the plaintiff, it had already been sold to the added defendant, and his conveyance, though subsequent in date to that of the plaintiff, under section 289 relates back to the sale, and gives him a title as and from that date. The sale to the added defendant here was a good sale, and effective under the Procedure Code, but no deed for it was issued until after the sale to the plaintiff, and there could therefore be no conflict of

¹ (1883) *Wendt* 383.

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deeds. Section 17 of the Registration Ordinance could not apply until after the issue of the Fiscal's conveyance to the added defendant, when, again, the section did not apply, because the deed of the plaintiff from which he claims priority was prior to and not subsequent to the added defendant's deed.

I think that there is no doubt that a Fiscal's transfer is a deed which is affected by section 16, and that section 17 of Ordinance No. 14 of 1891 itself shows it was intended as an arbitrary enactment to give an artificial priority by registration under the exact circumstances detailed in the section to deeds affecting land, but not in any other way to affect existing law. I am also of opinion that it is established law in Ceylon that mere notice of the prior deed is not sufficient to deprive the subsequent deed of its predominance acquired by registration. See D. C. Kandy, 67,295,¹ and D. C. Kurunegala, 3,971.²

I would dismiss the appeal with costs.

WOOD RENTON J.—

This is an action *rei vindicatio*, and the material facts are these. One Sophia Ratnaike had a life interest in the property in suit. That life interest was seized on writ in D. C. Colombo, 23,669, issued by the added defendant-respondent on February 12, 1907. The seizure was registered on February 18, 1907, and the life interest was sold on June 10, 1907, and purchased by the added defendant for Rs. 600. The sale was confirmed on August 16, 1907, Fiscal's transfer issued on May 25, 1908, and the transfer was registered on June 13, 1908. The plaintiff-appellant issued writ against Sophia Ratnaike in C. R. Colombo, 3,576, on January 24, 1907, seized the life interest on September 19, 1907, and sold it on February 5, 1908, himself purchasing the life interest at the sale for Rs. 10. The appellant obtained his Fiscal's conveyance on April 16, 1908, and the Fiscal's conveyance was registered on April 22, 1908. The appellant has, therefore, in his favour priority both in the date of the execution and in the date of the registration of his conveyance. He claims the benefit of the provisions of section 17 of the Registration Ordinance, No. 14 of 1891. That section is in these terms :—

Every deed, judgment, order, or other instrument as aforesaid, unless so registered, shall be deemed void as against all parties claiming an adverse interest thereto on valuable consideration, by virtue of any subsequent deed, judgment, order, or other instrument which shall have been duly registered as aforesaid. Provided, however, that fraud or collusion in obtaining such last-mentioned deed, judgment, order, or other instrument, or in securing such prior registration, shall defeat the priority of the person claiming thereunder; and that nothing herein contained shall be deemed to give any greater effect or different construction to any deed, judgment, order, or other instrument registered in pursuance hereof, save the priority hereby conferred on it.

¹ Ramanathan (1887) 198.

² (1911) 14 N. L. R 284.

I do not think that in view of the language of section 17 it can fairly be argued that a Fiscal's transfer does not fall within the purview of Ordinance No. 14 of 1891, and I am clearly, of opinion, for the reasons which I gave in 133—D. C. Kurunegala, 3,971,¹ a judgment concurred in by Grenier J., that the mere fact that the appellant at the date of the registration of his conveyance had notice of the respondent's conveyance is not sufficient to establish a case of fraud within the meaning of the first proviso to section 17 of Ordinance No. 14 of 1891. But by the terms of section 17 itself the appellant is not entitled to the benefit of that section, unless his deed was of subsequent date to that of the deed over which priority is claimed. Now, the appellant's deed, as I have already pointed out, is prior in point of time to that of the respondent, but his counsel contends that the effect of section 289 of the Civil Procedure Code is to antedate the respondent's deed to the date of the sale whenever the sale has been confirmed by the Court, and the Fiscal's conveyance is executed in pursuance of it.

In my opinion section 289 will not bear that construction. All that it says is that on the confirmation of the sale and the execution of the Fiscal's transfer "the grantee in the conveyance is deemed to have been vested with the legal estate from the time of the sale." The section, I think, merely provides in effect that, on the confirmation of the sale and execution of the conveyance, the judgment-debtor is divested of his title to the property. There is nothing in the section that would justify us in holding that it operates to antedate the conveyance for the purposes of another and entirely independent enactment such as Ordinance No. 14 of 1891. Section 289, has, however, an application to the facts of the present case. By virtue of that section Sophia Ratnaike was divested of her life interest in the property as from June 10, 1907, and the appellant could derive no right to it through his purchase in execution against her on February 5, 1908.

I have not thought it necessary to go through the cases cited to us in detail, since we are sitting as a Bench of three Judges for the very purpose of interpreting the law after full argument. If it had been necessary to decide the point, I should have held against the contention of Mr. Bawa, the respondent's counsel, that an execution purchaser, although he no doubt takes only the right and title of the judgment-debtor, can be said to be a person holding under him or deriving title through him, within the meaning of section 289 of the Civil Procedure Code.

For the reasons above given, I think that this appeal should be dismissed with costs.

Appeal dismissed.

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