
[PRIVY COUNCIL.]

1920.

Present: Viscount Haldane, Lord Moulton, and Lord Parmoor.

RAJAPAKSE v. FERNANDO.

Sale by a person who has no title—Subsequent acquisition of title by vendor—Registration in wrong folio.

Where a grantor has purported to grant an interest in land which he did not at the time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the benefit of the earlier grantee.

C, when he had no title (in 1909), sold the lands in question to defendant's predecessor in title by a deed which was registered in folio F 81/366 in the same year.

C obtained a Crown grant in 1912, and the property was sold in execution against him and purchased in 1916 by plaintiff's predecessor in title. The Crown grant was registered in 1914 in a different folio, F 120/125.

Held, that defendant had superior title, and that the registration of the Crown grant was not valid. "In the present case, C, who held the Government grant and must have been party to the registration, was fully aware of the earlier conveyance, and the infringement of the regulation in section 24 of the Land Registration Ordinance, 1891, must have been intentional on his part. Their Lordships are not prepared to hold that the registration of the Crown grant was, under these circumstances, valid."

THE judgment of the Supreme Court is reported in *20 N. L. R. 30*.

May 14, 1920. Delivered by LORD MOULTON:—

In this case the appellant, who was plaintiff in the action, brought an action of ejectment against the defendant in respect of certain lands described in a grant by the Crown to one Thomas Carry

¹ (1918) *20 N. L. R. 338*.

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dated February 22, 1912, and registered in the Land Registry of the district in folio F 120/125. The lands are therein described as in the village of Thalamedagoda. The date of the registration is October 16, 1914. This grant is the foundation of the title of the appellant, but it is not necessary to set forth the various steps by which the appellant traces his title from the said Crown grant, as no objection is raised to them.

The respondent's case is that the lands in question were conveyed by the said Thomas Carry to his predecessors in title by a deed dated December 11, 1909, registered on December 15, 1909, in folio F 81/366. As that date was prior to the date of the registration of the Crown grant to Thomas Carry, the appellant contends that the latter was improperly registered by being placed in a different folio, and that, further, the said Thomas Carry was incapable of giving a title to the lands in question to any one other than the respondent's predecessors in title, inasmuch as the title acquired by the said Thomas Carry under the Crown grant went automatically by operation of law to complete the title purporting to have been granted by the said Thomas Carry by the transfer of December 11, 1909, above referred to.

The relevant facts are as follows. Prior to the events referred to above Thomas Carry had purported to purchase the lands in question from various native occupiers. He formed an estate, which he termed the Medagoda estate out of them, and it was that estate which by the deed of December 11, 1909, he purported to convey to the respondent's predecessors in title. The various conveyances from the native occupiers were duly registered, but it is not necessary to refer to them, more particularly as it is admitted that the occupiers had no further title than was given to them by their being in possession of the lands, and that the real title was in the Crown.

Thomas Carry, therefore, in conveying the lands in question to the predecessors in title of the respondent by the deed of December 11, 1909, was conveying that to which he himself had no valid title. But on October 8, 1908, he purchased these lands from Government. The grant made to him by the Government on February 22, 1912, was for the purpose of carrying into effect this sale.

Both the Courts below have found that the lands in question were covered by the conveyance from Thomas Carry to the respondent's predecessor in title, which (as has already been stated) was dated December 11, 1909, and registered on December 15, 1909, in folio F 81/366, and their Lordships see no reason to doubt the correctness of this conclusion, apart from the fact that there are two concurrent findings of fact to this effect in the judgments in the Courts below.

It is clear, therefore, that the registration of the Crown grant should have been in the same folio as the registration of the

conveyance of December 11, 1909. In any case, under section 24 of the Land Registration Ordinance, 1891, the later registration must state the volume and folio of the register in which such property has been previously registered. The language of the section makes this imperative, and it is obvious that observance of this provision is vital to the effectiveness of a system of registration. In the present case Thomas Carry, who held the Government grant and must have been party to the registration, was fully aware of the earlier conveyance, and the infringement of the regulation in section 24 must have been intentional on his part. Their Lordships are not prepared to hold that the registration of the Crown grant was under these circumstances valid, or that it had any effect at law.

But it is not necessary to discuss the effect of this upon the appellant's title, because their Lordships are of opinion that by the Roman-Dutch law as existing in Ceylon the English doctrine applies that where a grantor has purported to grant an interest in land which he did not at the time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the benefit of the earlier grantee, or, as it is usually expressed, "feeds the estoppel." When, therefore, on February 22, 1912, Thomas Carry acquired from the Government the title to the lands which he had conveyed by the deed of December 11, 1909, the benefit of that title accrued to the grantees under that deed, i.e., the respondent's predecessors in title. It is possible that the existence of a compulsory scheme of registration might, under certain circumstances, bring about modifications of the application of that doctrine to land in Ceylon, but in the present case no such difficulties arise, because the earlier conveyance was duly registered and was the only deed relating to the lands in question, which was registered or even existing at the time.

A great part of the argument on behalf of the appellant was based on the fact that in the register of the sale of the land by Government to Thomas Carry, it is spoken of as the Ihamedagoda estate, and in the registration of the deeds relating to the title of the appellant, it is registered as being in the village of Ihamedagoda; whereas in the deeds relating to the respondent's title it is spoken of as being in the village of Medagoda. But the provisions of section 24 of the Ordinance turn on the identity of the lands, and not upon the identity of the nomenclature by which they are described, and their Lordships have no doubt that the change in name did not connote any change in identity, and was not understood so to do by any one concerned.

Their Lordships are, therefore, of opinion that the decisions in the Courts below were right, and will humbly advise His Majesty that this appeal should be dismissed, with costs.

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Appeal dismissed.