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SAIBO *v.* ANDRIS *et al.*

D. C., Tangalla, 432.

Crown grant—Presumption of ownership arising from issue of Crown grant—Presumption arising from character of land—Ordinance No. 12 of 1840.

A sale of land by the Crown and the issue of a Crown grant to the purchaser do not of themselves raise a presumption that the land was one over which the Crown had disposing power.

Per LAWRIE, J.—As to the presumption arising from the nature of the land, a swamp, waste, or uncultivated land, which is within the limits of or adjacent to cultivated land belonging to a private owner, will not be presumed to be the property of the Crown.

PLAINTIFF claimed a field named Karambadelawalakumbura by purchase from the Crown, for which he held a Crown grant. Defendants claimed the same land as part of their land called Karambadelahena. The District Judge dismissed plaintiff's case. He held that it was proved by witnesses on both sides that a portion of the land now in dispute was formerly a marsh, variously called Amunugilma, Helunode, and Karambadelawala;

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that at the time of the Crown survey a portion of the land surveyed for sale had been converted into a paddy field, and a portion (in extent 1 amunam, or 3 acres) was marshy and uncultivated; that the latter portion was, since survey and sale to plaintiff, converted into field by the defendants; that the question was whether the marsh was part and parcel of defendants' land Karambadela, or whether it was a distinct and separate land; that if it was a distinct and separate land, the presumption created by section 6 of Ordinance No. 12 of 1840 would operate in favour of plaintiff for a portion at least of the land he had bought, but if the marsh was one and the same land with the chena, the defendants, who were owners of a part, would be deemed to be owners of the whole; that the reason why the marsh was not brought under cultivation was, not because it was considered to be Crown land, but because it had not been drained; that the defendants were endeavouring to reclaim the whole ground, and they left the portion in question to the last to be drained and made fit for cultivation; and that plaintiff bought the land knowing, from its very name Karambadelawalakumbura, that it was a field in possession of some one.

Against the decree dismissing his case, plaintiff appealed.

Wendt, for appellant.

Dornhorst, for respondent.

11th October, 1898. LAWRIE, J.—

In September, 1894, the Government Agent of the Southern Province gave notice in the *Government Gazette* that he would on a day fixed sell a paddy field No. 10,186, of 4 acres 3 roods 37 perches, situated in Bowala in Giruwa pattu west.

It was stated that the applicant for the land was a Don Abeywickrama Jayawardena and that the Crown was the claimant.

If the intending purchaser had made further inquiry he would have found that members of the Kankanagedara family were in possession of the land; that they had made a paddy field out of a swamp, which they claimed as part of Karambadelahena, which they said belonged to them; and that the claim had been rejected by the Assistant Government Agent, who had ordered the land to be put up for sale. At the sale a Moorman, the plaintiff Suma Lebbe Patchur Saibo, purchased the land, paying in all Rs. 320, more than Rs. 60 per acre.

This is his description of what happened :—

"I went to the land with the Vidane Arachchi, who pointed "out the land sold, and the defendants (Kankanangedara) "disputed my right and refused to let me enter."

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The plaintiff also said :—

"It is a good paddy land, with a good supply of water both for "yala and maha from the Kikana stream..... When I went to "the land the defendants were in possession and had cultivated. "It is now in good cultivation..... The same extent of chena "land would not be worth much."

Now it is clear that, at the date of advertising the sale, the land was not forest, waste, unoccupied, nor uncultivated, nor was it a chena, which could only be cultivated after intervals of several years. The Ordinance No. 12 of 1840 did not apply.

There was no presumption that the land belonged to the Crown. Apart from the presumption arising from the character of the land, I am of opinion that there is no presumption that land conveyed by a Crown grant is land over which the Crown had disposing power.

No Ordinance has ever given that privilege to a Crown grant, and this court has never held that there is a presumption.

It is strange that a grant in the name of Her Majesty, under seal of the Colony, signed by the Governor and by the Colonial Secretary, should have no intrinsic weight, but such I think is the law, and the reason is not far to seek.

Sales by Government are often instigated by private applicants. Lands are surveyed and advertised to which Government has no real claim, of which it never was in possession.

A reference to any *Gazette* shows that Government advertises and sells paddy fields and lands planted with cocoanuts. Government takes up the position that it does not warrant its title, that it leaves to the purchaser the chance whether he gets possession or not. Knowing this we must look into the evidence in each case and decide whether the land granted did or did not belong to the Crown.

The plaintiff submitted that the paddy field in question was at the disposal of the Crown, because a few years ago it was a swamp, and that a swamp is unoccupied land, it must be presumed to be the property of the Crown.

I am unable to assent to the proposition. Certainly the Crown is not presumed to be the owner of every bit of swamp or every bit of waste land in the Island. This swamp was not claimed by the Crown as an appurtenance of any other Crown land, it was surveyed and sold as a separate subject, although it is clear that it is a part of a land Karambadela. Part of that land was called Karambadelahena, and this part was called Karambadelawala and now Karambadelawalakumbura.

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It is proved that the defendants (of the Kankanagedara family) were in possession of Karambadelahena, and that they claimed this swamp or wala as part of their land.

On every estate there must be some waste, some uncultivated land, some clumps of trees, some land for firewood, or, as here, a hollow where the water lies, which waits for the man of energy and capital to improve.

The Crown surely cannot be presumed the owner of scraps of uncultivated land adjacent to the cultivated land belonging to its subjects. I do not find evidence that even when the land was a swamp it was land at the disposal of the Crown.

I am for affirming the judgment with costs. I hope the plaintiff will get repayment of the money paid by him.

BONSER, C.J.—I agree.