DON SIMAN *v.* JOHANIS *et al.*

D. C., Colombo, 8,059.

1898.
August 2.

Crown grant—Rule of Civil Law—Jurisdiction as to title acquired from the Crown—Overvaluing of claim to bring case within jurisdiction of the District Court—The Courts Ordinance, s. 74.

Semble, per BONSER, C.J.—That the rule of the Civil Law, that a purchaser from the Government acquired by the grant a good title, is law in this Island at the present day.

The practice of parties overvaluing their claims in order to bring them within the jurisdiction of the District Court is one which should be discouraged, and District Judges, where they have suspicion of its being followed, should require evidence of the value of the land which is the subject of action, and enforce the provisions of section 74 of the Courts Ordinance.

THE facts of this case sufficiently appear in the judgment of BONSER, C.J.

Sampayo, for appellant.

Dornhorst, for respondent.

2nd August, 1898. BONSER, C.J.—

This is an action *rei vindicatio* to establish title to a small portion of land, two roods in extent, situate in a village in the District of Colombo. In this action the plaintiff has to make out a title. He proved that in 1881 he obtained a Crown grant for this identical piece of land. The defendants did not dispute the fact that the Crown in 1881 did grant this land to plaintiff; but they maintained that the Crown had no right or title so to deal with the land, and that at the time of this Crown grant the land belonged to themselves and their predecessors in title by virtue of certain conveyances, or at any rate by virtue of possession for the statutory period.

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It is very inconvenient that we should go behind the Crown grant. It seems to me that the rule of the Civil Law—that a purchaser from the Government acquired by the grant a good title and was, in the words of the rescript of the Emperor Zeno, *statim securus*—was based on sound policy and tended to establish titles and to diminish litigation. However, in the present case it is not necessary to decide whether that rule is law at the present day, for I am of opinion that the defendants have failed to make out that they ever were owners of this land, or that they have been in possession of it for the statutory period.

The reasoning of the Acting District Judge on the facts commends itself to my mind, and I must affirm this decision.

It appears that the consideration paid to Government was Rs. 7, and I have a strong suspicion that the value of this land was not such as to warrant this action being brought in the District Court. Although there is a statement in the plaint that the value of the land was Rs. 200, there is no evidence in these proceedings of its present value, or to what use it has been put of late years. I have said I have a strong suspicion that its value is much less than that stated in the plaint. Section 74 of The Courts Ordinance, No. 1 of 1889, provides that, if actions are commenced in a District Court which might have been commenced in a Court of Requests, the plaintiff shall not be entitled to any costs except such as the District Judge may see fit to give —a very proper provision to keep down the cost of litigation.

This case will, therefore, be sent back to the District Court to take evidence as to the value of the land, and to act, in awarding costs, according to the result of such inquiry. I have heard experienced Judges of District Courts say that the practice is common of parties overvaluing their claims in order that they may take them out of the jurisdiction of the Courts of Requests. This practice, if it exists, should be discouraged: and I think it would be well for District Judges, in cases where they have any suspicion of its being followed, to require evidence of the value of the land which is the subject of the action.

WITHERS, J.—

I am quite prepared to affirm the judgment for the reasons given by the District Judge.

The remission of the record in order that the District Judge may satisfy himself of the value of the land at the time of the action meets with my entire concurrence.

District Judges are, I think, apt to forget the wholesome provisions of section 74 of the Jurisdiction Ordinance, No. 1 of 1889.