SILVA v. REGISTRAR-GENERAL.

1902.
May 19.

D. C., Colombo, 237.

The Land Registration Ordinance, No. 14 of 1891, s. 15—Application of intending purchaser of a land to inspect book of registration in which the deeds relating to that land are registered—Facts necessary to be stated to the Registrar-General—Duty of that officer.

A person who claims to be the intending purchaser of a land and applies to the Registrar-General, under section 15 of the Ordinance No. 14 of 1891, to inspect the book of registration in which the deeds relating to such land are registered, is bound to furnish to that officer reasonable information which satisfies him of the genuineness of his claim that he has an interest in the entries in question; but the Registrar-General has no right to require the applicant to produce from the owner his written authority or consent to inspect the entries, for that would be making the owner the arbiter on the point.

UNDER the provisions of section 32 of the Ordinance No. 14 of 1891, the applicant moved for and obtained a rule on the Registrar-General to show cause why the applicant should not be permitted to search for incumbrances affecting the property which he alleged he was in treaty with its owner to buy.

On cause shown, the District Judge of Colombo (Mr. D. F. Browne) discharged the rule.

The applicant appealed.

Walter Pereira, for appellant.—The appellant, having arranged with the owners of a property in Colombo to buy the same, required the respondent to allow his proctor, in terms of section 15 of the Ordinance No. 14 of 1891, to inspect the books in which the deeds relating to that property are registered. The respondent declined access to the books until the appellant produced a written authority from the owner of the land authorizing such inspection. Section 15 empowered all parties claiming to be interested therein or their proctors to inspect the books. "Therein" refers to the books of registration, and not the lands, as held by the District Judge, who has held in effect that an intending purchaser was not a party interested in the books. So long as a person claims to be interested in the books, it is not competent to the Registrar-General to go behind such person's application and inquire whether or not such claim is well founded. An intending purchaser is a person claiming to be interested. It has been decided in *Suppramanian v. Gunawardana* (*3 N. L. R. 278*) that any one who chooses to do so may ascertain from the registry the existence of any deed touching any particular land. An intending purchaser has

1902.
May 19.

a fortiori such a right. If the right were not conceded except with the owner's consent, what is an intending purchaser at a Fiscal's sale to do? He may not know the execution-debtor at all, or the latter may refuse to give him his consent. Registration is notice to the public, and therefore it would be obviously dangerous to an intending purchaser to be without access to the books of registration. "Interested" means, according to Webster, liable to be affected.

Rámanáthan, S.-G., for respondent.—"Interest," as used in the Ordinance, is something more than the interest of one human being in the affairs of another human being. Where the Legislature has used the expression "party interested" or "person interested," it has been always understood to mean a specific interest. For example, a bankrupt is not a party interested under sections 39 and 40 of the Solicitors' Act (*6 and 7 Vict. c. 73*), *re Leadbitter, 10 Ch. Div. 38.* Nor is any one who is not a shareholder in a Company which has a contract, a person interested in that contract (*Dewes v. Canal Company, 3 H. L. C. 757*). The trustees of a friendly society are not "persons interested" in the matter of an application for altering the rules of a friendly society made within section 41 of *18 and 19 Vict. c. 63* (*Hall v. Macfarlane, 27 L. J. C. P. 41*). So here, the meaning of the expression "claiming to be interested" must be gathered not from section 15 of the Ordinance only, but from the general context. The Ordinance No. 14 of 1891 is intimately connected with the Ordinance No. 5 of 1877, which refers to the registration of titles to land. Originally the Ordinance No. 8 of 1863 provided for the registration of titles to land and of deeds affecting land. This was repealed by the Ordinance No. 14 of 1891, but many of the old sections were re-enacted in it. The expression "claiming to be interested" occurs in the Ordinance of 1863 and 1877, as also in the Ordinance of 1891, and seems to mean an interest claimed by virtue of a legal right. See section 8 of the Ordinance No. 5 of 1877 and section 17 of the Ordinance No. 14 of 1891. To accept a claim that does not rest upon such a foundation would lead to the absurdity of enabling an idler or mischief-maker to pry into the muniments of title of innocent holders, which the law holds sacred. No notary public would throw open his protocols to a stranger without the consent of the parties to the deed. The Registrar-General holds the deeds attested by all the notaries in the country, and he must not disclose to idlers and mischief-makers the deeds held in privacy by the notaries, unless the law allows him to do so. It is only when a person has a legal or valid interest in the deed he seeks to examine, that he should be allowed

access to it. The appellant speaks of himself as an intending purchaser of a property, and the Registrar-General has a right to call upon him to show that he was really an intending purchaser. It was stated by the appellant that he had entered into a treaty with the house owner to buy the land. The Registrar-General thereupon asked the appellant to produce a letter from the owner to that effect. In the circumstances of the case, that request was neither unreasonable nor difficult to comply with.

Walter Pereira replied.

Cur. adv. vult.

19th May, 1902. MONCREIFF, A.C.J.—

On the 2nd February, 1902, the appellant arranged with two persons to buy from them certain immovable property situated in Colombo. He obtained the title deeds of the property and sent them to his proctors for inspection and report. The property was registered in the books of the Registrar-General under certain titles. On the 5th February the appellant wrote to the Registrar-General to the effect that he had arranged to purchase the property in question, and requested him to be good enough to allow his proctors to search for incumbrances affecting it. The Registrar-General said, in reply, that he would grant permission upon the production of a written authority from the owners. The appellant replied that, in accordance with the provisions of Ordinance No. 14 of 1891, no such written authority was required. The Registrar-General, however maintained his position, and said that he could not permit inspection of the books without the consent of the owners. Thereupon the appellant obtained a rule in the District Court of Colombo calling on the Registrar-General to show cause why the appellant, or his proctors or agent, should not be permitted to search for incumbrances affecting the property described in the annexed affidavit. After argument the rule was discharged. The appellant has appealed.

The incident is covered by section 15 of Ordinance No. 14 of 1891, which was enacted, according to the preamble, because it was " expedient to consolidate and amend the laws relating to the " Registration of Titles to Land, and of all deeds affecting lands " in this Colony. " It is cited as " The Lands Registration Ordi- " nance, 1891. " The first part of section 15 (1) relates to the books kept by the Registrar-General, and the object of the registration of deeds is therein described to be " to facilitate reference to all " existing alienations or incumbrances affecting the same lands. " In the latter part of the first sub-section, it is provided that the books " shall at all reasonable hours, upon a written application

1902.
May 19.
MONCREIFF, A.C.J.

"in that behalf, be open to the inspection and perusal of all "parties claiming to be interested therein, or to their proctors or "agents duly authorized thereto in writing, with liberty to demand "and receive copies or extracts therefrom."

The words which concern us are "all parties claiming to be interested therein." The Registrar-General thought that "therein" referred to the lands; the appellant says that they refer to the entries in the books. I cannot admit that there is any doubt on the subject. Even if the policy of the Ordinance had been such as to favour the respondent's contention, I should have thought it wholly impossible, in view of the grammatical construction of the sentence, to hold that the word "therein" refers to anything but the books. As a matter of fact, I think that not only has the Legislature said that the books should be open to those claiming to be interested in them, but that it intended to say so. That is a view which is in accordance with the tendency of modern legislation. It does not seem to me to be consistent with the principles of fair dealing that a person who is about to sell a property should be able to conceal from his purchaser the incumbrances attached to it. In any case, although we may have power to construe legislative enactments, we have no power to alter them, and in my opinion we should be altering what the Legislature has said if we acceded to the view of the respondent. If any confirmation of this view were required, I think it is to be found in section 14, where again it is provided that "duplicates and indexes shall be open to the inspection and "perusal of all parties claiming to be interested therein." The construction of that sentence is even more simple than that of the sentence in section 15. Of course, if the Registrar-General had been right upon this point, there would have been considerable plausibility in his argument, because it might be said that a person claiming to be interested in the land was one who claimed to have an interest in the land, and that an intending purchaser was not a person who had an interest in the land.

There remains a further question—Who is a person "claiming "to be interested?"

In my opinion it could hardly be meant that he is any person who chooses to go to the Registrar-General and say, "Show me "such and such a deed. I am interested in it." Otherwise it would not have been necessary to say more than "all parties "applying therefor." I think the Registrar-General is entitled to have from the applicant reasonable information which satisfies him that the applicant honestly and genuinely claims to be interested in the entries, or at least information which will

enable him to satisfy himself upon that point.—Now, the view of the Registrar-General was not that he was entitled to have from the owners of the property confirmation of the applicant's statement, because it is not questioned by him that the appellant's statement was true; but he required that the appellant should procure from the owners their written authority or consent; that is to say, he made the owners the arbiters on the point. He considered that he stood in the position formerly occupied by the notary. I can see no words in the section, nor can I see any argument arising from the legislation on the subject, which supports that view. If the Registrar-General had been right, it might have resulted that when the appellant went to the owners and asked for authority, the owners, who might possibly be unwilling vendors, would have said " No; that is the affair of the " Registrar-General; we have nothing to do with it ". In the end no doubt the purchaser would have lost his purchase, and the owners their purchaser; and the Registrar-General would have refused inspection to a person who not only claimed to be but was interested in the entries in the books, and had done everything in his power to meet the Registrar-General's requirements.

Taking the view I do, I think that this appeal should be allowed, that the order discharging the rule should be set aside, and the rule made absolute.

WENDT, J.—

The question upon this appeal is whether the Registrar-General was right in refusing to permit the appellant by his proctor to search the Register of Lands kept under section 15 of " The Land Registration Ordinance, 1891 ", for incumbrances affecting a certain tenement in Colombo described as bearing assessment No. 4, Kanatta road. In other words, the question is whether the appellant is a " party claiming to be interested " within the meaning of section 15.

The appellant based his written application to the Registrar-General on the fact that he had arranged with the owners, two named persons, for the purchase of the property, and he mentioned the volumes and folios of the registration books in which the deeds relating to that property were registered. In his answer to the application, the Registrar-General required the appellant to furnish him with a written authority from the owners of the property, and on the appellant's proctor pointing out that under the Ordinance no written authority from the owners was necessary to enable a person claiming to be interested in any property

1902.
May 19.
WENDT, J.

to search for incumbrances affecting such property, the Registrar-General replied that the appellant's application could not be allowed without the consent of the owners of the land to which it related. The present application was then presented to the District Court in pursuance of the provisions of section 32.

Section 15, which we have to construe, is by no means clearly worded, but I think that its grammatical construction makes this much certain, viz., that the relative " therein " in the phrase " claiming to be interested therein " refers to the book constituting the register, and not to the lands mentioned earlier in the section. The " party " applying for inspection must therefore be one claiming to be interested in the register, and not necessarily in the lands mentioned therein. This view disposes of the contention put forward on behalf of the Registrar-General that the " interest " must be an interest in the land—what I may term a conveyancing interest, something carved out of the *dominium*.

While I hold with the appellant that the interest required need not be an interest in the land, I am against him in the contention that it was sufficient for him to have " claimed " an interest to entitle him to inspection; that no further question could be put to him by the Registrar-General by way of ascertaining whether he really possessed the qualification which he claimed. To adopt the appellant's construction would be to hold that the words " partly claiming to be interested " amounted to no more than the term " any person ", which occurs in relation to the inspection of a statutory register in " The Carriers' Ordinance, 1865 ", section 15, and " The Patents Ordinance, 1892 ", section 12; or the term " every person " (" The Joint Stock Companies' Ordinance, 1861 ", section 4 (5)); or the term " all persons " (" The Births and Deaths Registration Ordinance, 1895 ", section 45, and " The Marriage Registration Ordinance, 1895 ", section 48); or the term " the public " (" The Trade Marks Ordinance, 1888 ", section 26).

The words " claiming to be interested " are clearly inserted as a limitation of the term " all parties ", and as defining the qualification which an applicant for inspection must possess.

It is instructive that in all cases of statutory registers relating to land a similar qualification is insisted upon. See " The Temple Lands Registration Ordinance, 1856," section 23 (" any person interested therein "); " The Service Tenures Ordinance, 1870," section 11 (" party interested in such inquiry "); " The Land Registration Ordinance, 1877," section 27 (" all persons claiming to be interested in any of the lands therein registered ").

When, therefore, a public officer is required to afford to a person possessing a particular qualification inspection of a register, which

he is bound as part of his official duty to keep, and which is not made "a public document" or "open to the inspection of the public," as in the Trade Marks Ordinance or in the Patents Ordinance, it is obvious to my mind that he is entitled to be satisfied by an applicant for inspection that he possesses the necessary qualification.

The evidence before us shows that the Registrar-General did not, in the present instance, question the possession by the applicant of the interest which he claimed to possess, as constituting his qualification, namely that he had arranged with the owners to purchase from them the premises described. The position the Registrar-General took up was that, assuming such arrangement, the applicant could not be permitted access to the register without the express consent of the owners. We have to consider whether that position was justified by the Ordinance.

In my opinion, the object of providing a system of registration of titles to land and of deeds affecting lands—such as was first established by Ordinance No. 8 of 1863—was not merely to benefit persons already owning the *dominium* or some lesser right in lands, but also to aid those who are about to acquire such an interest, to enable them to ascertain in whom such interest was vested, and to what incumbrances or other qualifications it was subject. And so the preamble to the Ordinance of 1863 recites that the want of a proper system of registration of titles to land, and of deeds affecting lands, is found to be productive of much injury to the owners of such lands, "and to others interested therein." Considering how large a proportion of the sales of lands in Ceylon are effected *in invitum* through the agency of the Fiscal, acting on writs of execution, to hold that the register could only be inspected with the express consent of the owners (the execution-debtors) would be to completely defeat the object of registration in the case of purchasers at such sales, who might discover, when too late, that the land was subject to a long lease, or mortgaged above its full value. The reason of the thing would seem to require that in such cases the Fiscal at least, who seizes and advertises the land for sale, should be entitled to inspect the register of deeds.

Taking this view of the object and scope of the Registration Ordinances, I think the appellant has made out his right to inspect the register, inasmuch as he claimed—and the claim was not questioned—to have arranged with the owners for the purchase of the premises described. The appellant's affidavit indeed discloses a matter which the Solicitor-General admitted would, if it had been brought to the Registrar-General's notice,

1902.
May 19.
WENDT, J.

have induced him at once to grant the appellant's request. I refer to the fact that the owners had entrusted the appellant with the title deeds of the property for the purpose of the purchase This, the Solicitor-General said, would have been evidence that the owners consented to the appellant's application. But as this fact was not stated to the Registrar-General, I of course decide the appeal without reference to it. I hold that the appellant established his possession of an interest in the register relating to the tenement No. 4.

I would advert to the contention for the respondent that the Registrar-General was in the position occupied by a notary before the Registration Ordinances came into force, and must therefore refuse (as a notary would refuse) to disclose to any and every inquirer any information relating to deeds in his possession or executed before him. Assuming that a notary would have been obliged to refuse such information to a person in the appellant's position, it is sufficient to say that, unlike a notary, the Registrar-General is an officer of the State, whose duties are defined by the statute creating his office, and those duties are to be ascertained for the present purpose by construing section 15 of the Ordinance, which regulates the keeping and inspection of the register.

For the foregoing reasons I concur with the Chief Justice.

The order appealed against will be set aside, and it will be ordered that the respondent (the Registrar-General) do, upon the appellant appearing before him in person or by his proctor Mr. J. A. Perera, at a reasonable hour, permit him to inspect and peruse the register relating to the property in the appellant's affidavit mentioned, with liberty to demand and receive copies of, or extracts from, such register.

The appellant will have his costs in both Courts.