

Present: The Hon. Mr. A. G. Lascelles, Acting Chief Justice, and
Mr. Justice Middleton. 1906.
October 18.

PERIS v. PERERA *et al.*

D. C., Colombo, 21,270.

Registration—Prior deeds—Chain of title—Registration of immediate transfer—Ordinance No. 14 of 1891, s. 17.

A P, being owner of one-sixth share of a land, conveyed it by deed dated 8th April, 1867 (unregistered), to his sister, the twenty-sixth defendant. The twenty-sixth defendant sold the said one-sixth share and a one forty-eighth share, which she inherited from her father, to L P, by deed dated 19th November, 1876. In execution against L P, these shares were sold by the Fiscal and purchased by S P, who obtained transfer dated 15th February, 1889, and by deed dated 2nd December, 1890, conveyed them to P P, who by deed dated 4th June, 1891, and registered on 15th July, 1891, sold them to the twenty-sixth defendant. On a writ issued against A P, his one-sixth share was sold and purchased by S H, who obtained Fiscal's transfer dated 24th October, 1899, and registered in 1897, and sold it to P G, who sold to the plaintiff. L P, by deed dated 25th June, 1903, and registered on 25th July, 1903, sold one forty-eighth share to the plaintiff.

In a contest of title between the plaintiff and the twenty-sixth defendant as to the one-sixth and one forty-eighth shares,—

Held, that the twenty-sixth defendant had better title.

Held, also, that where a deed under which a person claims title is registered, it is immaterial that certain earlier deeds forming links in the title have not been registered.

THE facts are fully set out in the following judgment of the Additional District Judge (F. R. Dias, Esq.):—

“ The plaintiff started this action under the Partition Ordinance against thirty-six defendants for the purpose of partitioning a small garden of some 3 acres and 30 perches called Delgahawatta, but as nearly all the parties have been in possession of divided shares for many years, and the extent of their interests is admitted. the plaintiff has obtained leave to stamp the proceedings, and to confine his prayer to a declaration of title as regards a one-sixth and one forty-eighth share, which both he and the twenty-sixth defendant, Christian Perera, are claiming through a common source.

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“ The plaintiff is claiming altogether one-sixth plus one forty-eighth plus one-twelfth plus one forty-eighth, equal to seven twenty-fourths, and what we have to decide is whether his title to the first two shares is to prevail over that of the twenty-sixth defendant. His title to the last two shares (one-twelfth plus one forty-eighth) is not disputed.

“ We need not go too far back into the very complicated titles of all the co-owners to this land, as for our present purpose we are only concerned with the title of one, N. Abraham Perera. This man was admittedly the owner of one-sixth of the whole land by purchase in 1865, and in 1867 by the deed No. 7,377 (marked P 1, and not registered) he sold it to the twenty-sixth defendant, his own sister. From their father, Carolis, they later on inherited one forty-eighth each, and in 1876 by the deed marked P 2 the twenty-sixth defendant sold her inherited one forty-eighth plus her purchased one-sixth to one Don Louis Perera. This man was sold up by the Fiscal, who in 1889 by his transfer No. 3,964 (marked D 1) conveyed those one-sixth and one forty-eighth shares to one M. Suwaris Peris. He in 1890 by deed No. 12,318 (marked D 2) sold the shares to one L. Paulis Perera, who by deed No. 5,161 dated 4th June, 1891 (marked D 3), sold them to the twenty-sixth defendant. Neither P 1, P 2, D 1, or D 2 has been registered, but D 3 in favour of the twenty-sixth defendant has been registered in July, 1891.

“ Don Louis Perera, notwithstanding the Fiscal's sale of his one-sixth plus one forty-eighth in the year 1889, purported to convey those same shares to the plaintiff by deed No. 5,395 dated 25th June, 1903 (marked P 3). This deed was registered in July, 1903, but the plaintiff does not depend on it for his title to the one-sixth that came down from Abraham Perera. For this he relies upon a Fiscal's transfer, No. 4,291 of 1889 (P 5), registered in 1897, by which under a writ against Abraham Perera the Fiscal purported to sell and convey to one Susanchy Hamy a one-sixth plus one-twelfth share. On the same day by another transfer, No. 4,290 (P 4), the Fiscal sold to the same party another one-twelfth share belonging to Abraham Perera. This was a share he had acquired from another owner by purchase in 1871. That share is not in dispute now, so that, if we regard Abraham Perera's deed P 1 as non-existent or invalid, he had only the one-sixth he bought in 1865 and the one forty-eighth he inherited from his father which the Fiscal could have conveyed by P 5 to Susanchy Hamy, and not one-sixth plus one-twelfth.

“ Susanchy Hamy, professing to be entitled under her two Fiscal's transfers to one-third (*i.e.*, one-twelfth plus one-sixth plus

one-twelfth), sold that extent in 1901 by her deed P 6 to one E. P. Gunatilleke, who by deed P 7 dated April, 1903, sold it to the plaintiff. These deeds would only be good to the extent of one-twelfth plus one-sixth plus one forty-eighth, assuming of course that no valid title passed under P 1.

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“ Thus it will be seen that P 5 is in competition with D 3 as regards Abraham Perera’s one-sixth share, and P 3 is in competition with D 3 as regards the twenty-sixth defendant’s own inherited one forty-eighth share. As I have pointed out above, the deed D 3, under which the twenty-sixth defendant claims, has been registered many years before both P 5 and P 3, under which the plaintiff claims. It is true that the vendor in D 3 was Paulis Perera, and not Abraham or the twenty-sixth defendant, but that makes no difference, as the interests involved are identical with those claimed by plaintiff under P 5 and P 3.

“ Section 17 of Ordinance No. 14 of 1891 provides that every deed, judgment, order, &c., unless 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, &c., which shall have been duly registered. It is admitted that all these deeds were for valuable consideration, and it is quite clear to my mind that, the interests claimed by the two parties being identical, the registration of D 3 in 1891 had the effect of making the later registered deeds P 5 and P 3 void as against the twenty-sixth defendant and of giving her deed priority.

“ Hence the two shares in dispute must be awarded to the twenty-sixth defendant, and all that the plaintiff is entitled to is one-twelfth plus one forty-eighth, equal to five forty-eighths, under his deed P 7. Let decree be entered declaring the plaintiff entitled to five forty-eighths of this land, but he must pay the defendants their costs herein.”

The plaintiff appealed.

Walter Pereira, K.C., S.-G., for the appellant.—The simple question in this case is whether, when a parcel of land is sold by A to B and by B to C, and the same parcel is subsequently sold by A to D, competition necessary to confer priority by registration is between the deeds in favour of D and C or those, from the common source, in favour of D and B. It is submitted that the latter is the case. To hold otherwise would be to imperil and unsettle a large number of titles. The case of *Jack v. Armstrong* [see *Mill v. Hill* (1)] is in point. The facts are slightly different, but the principle involved is exactly

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the same. There the sale to D was prior to the sale to B, but the deeds in favour of D and B were unregistered, while the deed in favour of C was registered. The deed in favour of D, however, was held to have priority over C's deed, because the competition was held to be between the deeds in favour of D and B and not those in favour of D and C. In the present case the sale to B was prior to that to D, but that made no difference, because it has been repeatedly held in Ceylon that, although a person has alienated his property, he has still a saleable interest in it, provided the first alienation remains unregistered and the second is duly registered. Here D's deed is registered. Under the Ordinance all deeds under which a person claims must be registered for purposes of priority. That, it is submitted, means deeds from which he derives his title immediately and mediately. There is no hardship in requiring the registration of all such deeds. In the present case, when C registered the deed in his favour, he should have taken the precaution to register the prior deeds as well. The omission of such precaution would mislead third parties. On examining incumbrances they would find merely the sale of an undivided share by B to C. There would be nothing to show that the undivided share of A had been alienated.

W. S. de Saram, for the twenty-sixth defendant, respondent.—The competition is between the deeds of 1889 and 1891. As that of 1891 was registered prior to that of 1889, the Registration Ordinance is effective to give the 1891 deed priority over the 1889 deed. The respondent's chain of title from the 1867 deed to the 1891 deed is complete, and a good title was conveyed to the respondent in 1891 apart from the requirements of the Registration Ordinance. The title from one common source being complete, the provisions as to priority by registration would become operative, *Kadirawelpulle v. Pina* (1). The registration of the deed in *Jack v. Armstrong* was held to be unavailing to void a prior unregistered deed, on the ground that no title at all passed by the former which could gain priority by registration, because the estate purported to be conveyed had been obtained from the owner after he had already himself parted with it under the prior unregistered deed. In any case the respondent, and not the appellant, was in the position of B in the case illustrated at page 728 of *Sugden's Vendors and Purchasers*.

Walter Pereira, K.C., S.-G., in reply.

Cur. adv. vult.

18th October, 1906. LASCELLES A.C.J.—

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The matter in dispute between the appellant, who is the plaintiff, and the respondent, who is the twenty-sixth defendant, consists of two undivided shares—a one-sixth and one forty-eighth—of a garden known as Delgahawatta. In order to state the question of law raised on the appeal, the title of the parties must be shortly set out.

The respondent's title is as follows:—

Abraham Perera, being the owner of a one-sixth share, by deed P 1, dated 8th April, 1867, conveyed his share to his sister, the respondent.

The respondent, having inherited a one forty-eighth share from her father, by deed P 2, dated 19th November, 1876, sold both the one-sixth and the one forty-eighth shares to Don Louis Perera.

The property of Don Louis Perera having been seized in execution, the two shares were conveyed by Fiscal's transfer, D 1, dated 15th February, 1889, to Suwaris Peris.

Suwaris Peris by deed D 2, dated 2nd December, 1890, conveyed the shares to Paulis Perera, who by deed D 3, dated 4th June, 1891, and registered on the 15th July of the same year, conveyed the shares to the respondent.

Now all these deeds, with the exception of the last named, were either unregistered or registered at dates which render their registration immaterial.

The appellant bases his title to the one-sixth share upon a series of deeds beginning with a Fiscal's transfer, P 5, under a writ against Abraham Perera, dated 24th October, 1889, and registered in 1897, of the one-sixth share, and ending with a transfer, P 7, dated 23rd April, 1903, to himself.

The appellant's title to the one forty-eighth share depends upon a transfer, P 3, dated 25th June, 1903, and registered 25th July, 1903, by Louis Perera of the one forty-eighth share. This conveyance, of course, was long after this Louis Perera's share had been sold by the Fiscal by deed D 1 in 1889.

The respondent's deed, D 3, is thus, both in point of time and registration, long anterior to both the appellant's deeds P 3 and P 7.

The appellant contends, with regard to the one-sixth share, that the question of priority is not between his deed P 7, and the respondent's deed D 3, but between the Fiscal's transfer P 5, of Abraham Perera's share (which is the base of the appellant's title) and P 1, the transfer by Abraham Perera to the respondents in 1867. On this footing the appellant contends that, inasmuch as P 5 was registered in 1897 and P 1 was not registered at all, all the subsequent deeds, including the respondent's title deed, D 3, are invalid.

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The appellant in effect says: " True it is that the deed under which I hold is later in date and registration than the respondent's, but I claim priority because my title depends upon a registered transfer of Abraham Perera's share, whilst the respondent's is derived from an unregistered sale by that person." In other words, the appellant seeks to apply the test of registration not to the deed under which the respondent holds, but to an earlier deed forming a link in the respondent's title.

The Solicitor-General relied on the Irish case of *Jack v. Armstrong*, which is commented on in *Mill v. Hill* (1). In that case it was held that where A had conveyed by unregistered deed to D, and then conveyed by unregistered deed to B, who afterwards conveyed to C, the registration of the conveyance from B to C was not a registration of the conveyance from A to B, and both were postponed to the prior unregistered conveyance from A to D, because A, having granted to B, had nothing left in him to be granted except by a registered deed to be executed by himself.

This case, even supposing it to be sound law and applicable to our Registration Ordinance, does not seem to me to support the appellant's contention. B, in the case, took no title by his conveyance from A; the question was whether when C registered his conveyance from B this defect was cured. Here the respondent's title, independently of the registration, is a perfectly good one.

The principal cases under the Irish Registry Act are discussed in Lord Trevor's judgment in *Mill v. Hill*, but owing to the difference between the language of the two enactments, I doubt whether these decisions afford a safe guide to the construction of our own Ordinance. The practical question involved in the case is whether a purchaser under a good title, who desires to protect himself by registration, is obliged to register not only his own deed, but also the deeds of his predecessors in title.

Section 17 of Ordinance No. 14 of 1891 provides " that every deed . . . unless so registered shall be deemed void as against all parties claiming an adverse interest thereto . . . by virtue of any deed which has been duly registered."

This section contemplates on the one side a deed under which one party claims an interest, and on the other side another deed under which another party claims an adverse interest. The deed under which the respondent claims an interest in these shares is the final conveyance, D 3, in his favour, and not any one or more

of the deeds which gave title to his predecessors. To hold that a plaintiff is entitled to upset a registered title prior to his own by setting his own deed against an earlier deed from which the defendant derives title would be to compel every prudent purchaser or mortgagee to register not only his own deed, but all the deeds from which his title is traced. But the Ordinance does not require, or indeed enable, this to be done. Section 18 (1) enables a party "gaining an interest under any deed" to produce the deed for registration. The deed under which the interest is gained, and that alone, is required to be registered. The object of the Ordinance is to afford to intending mortgagees or purchasers the means of discovering incumbrances if registered, or of protecting them against unregistered and therefore secret incumbrances or conveyances. So fully was this principle recognized in the case of the Registry Acts in force in the countries of Middlesex and Yorkshire and in Ireland, that it was held that where the intending purchaser or mortgagee has actual notice of a prior unregistered incumbrance or conveyance, the principle of the Registry Acts became inapplicable and the subsequent purchaser with notice was not allowed in equity to avail himself of his title against the prior conveyance or mortgage.

Here the appellant, if he had made proper search when he purchased in 1903, would have found the respondent's purchase in 1891 duly registered. It is true that the appellant might have found it difficult to identify the one-sixth and the one forty-eighth shares conveyed by the deed D 3 with the shares he intended to purchase, but this is a difficulty which is inseparable from dealings in undivided shares. The respondent by registering his purchase in 1891 has clearly complied with the requirements of the Ordinance, and his deed, being prior both in date and registration to those of the appellant's, must prevail.

The appeal must be dismissed with costs.

MIDDLETON J.—

I have had the advantage of reading the Chief Justice's judgment, and it is not necessary to recapitulate the facts.

On the footing of the ruling in *Jack v. Armstrong* being applicable here, the respondent in this case gets, by the priority of the sale P 1 in 1867 of the one-sixth over P 5 of October 1889, and of D 1 of 15th February, 1889, of one forty-eighth over the sale of 1903, a better title than the appellant independent of the registration. In other words, Abraham Perera became divested of the one-sixth and Louis Perera of the one forty-eighth in the respondent's chain of

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title before either of the appellant's chains of title began from those persons. The respondent in fact is represented by B. in the example given at page 728 in Sugden's *Vendors and Purchasers* quoting the case of *Jack v. Armstrong*; and on the principle laid down in that case Abraham Perera, having conveyed one-sixth to respondent by P 1 in 1867, had no such fraction left to be conveyed in 1889 by P 5, and Don Louis Perera, having been divested of the one forty-eighth by the Fiscal's transfer in February, 1889, had no such share in him to be conveyed by P 3 in June, 1903.

In October, 1889, as against Abraham Perera the Fiscal purported to sell the one-sixth to Susanchy Hamy by P 5; but, independently of registration, that one-sixth had already passed out of Abraham Perera, and had passed by good title to Suwaris Peris in February, 1889, and thereafter by purchase under D 3 in June, 1891, became the property of the respondent, who registered her purchase in July, 1891.

The appellant then registered his purchase of October, 1889, in November, 1897, so that an adverse interest arose in October, 1889, by P 5; but before the deed purporting to convey that interest was registered, the respondent had registered her perfectly good title in 1891.

We have thus D 3, registered in 1891, in competition with P 5, registered in 1897, and in my opinion the priority of registration of a deed conveying a perfectly good title must prevail over a deed which could only have force and effect by registration under the Ordinance if the good title had not been registered, the same observations applying to the priority which I hold prevails in the case of D 3 over P 3.

The appeal must be dismissed with costs.

Appeal dismissed.

