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Present: Garvin and Dalton JJ.

BRAMPY SINNO *v.* BOOTH *et al.*

316—D. C. Kalutara, 11,786.

Consolidation of several contiguous allotments—Registration as a distinct corpus in a fresh folio—Absence of registration in respect of one lot—Subsequent registration of this lot in a different folio—Right folio—Section 24 of Ordinance No. 14 of 1891.

Where several allotments are registered in a fresh folio as a distinct *corpus* with appropriate references to previous registration,—

Held, that the proper folio for a subsequent registration of a lot having no registration prior to that of the consolidated property, was the folio in which the consolidated whole was registered.

ON a Crown grant dated March 14, 1910, two persons obtained title to a land named Pahalawela. Their interest in Pahalawela was acquired by F in 1916. The same year F mortgaged with P six contiguous allotments, including Pahalawela, under the name of Mudugomuwa estate—a distinct *corpus*. The bond was registered on June 12, 1916, in folio H 73/331, with appropriate references

[1] *(1921) 23 N. L. R. 194.*

to previous registration of only five of the six lots. On this date neither the Crown grant relating to Pahalawela, nor the conveyance to F had been registered. P put his bond in suit in 1920 and, in execution of the decree in his favour, became the purchaser of Mudugomuwa on a Fiscal's transfer which was registered on May 24. 1922, in folio H 73/331. In 1923 the added defendant obtained title to Mudugomuwa on a duly registered deed from P.

The Crown grant relating to Pahalawela and the deed of transfer in favour of F were registered on June 28, 1916, and June 24, 1916. respectively, in folio H 73/358. On September 17, 1920, F executed a deed conveying Pahalawela to the plaintiff and the defendant jointly. This deed was registered in Folio H 73/358. On the institution of the action by plaintiff for the partition of Pahalawela the added defendant intervened, and his title was held to prevail. In appeal this judgment was affirmed.

H. V. Perera (with *Weerasooriya*), for plaintiff, appellant.

Drieberg, K.C. (with *Rajapaksa*), for added defendant, respondent.

May 5, 1926. GARVIN J.—

It is common ground between the parties to this appeal that the land Pahalawela, which is the subject of the contest, originally belonged to the Crown. By its grant No. 49,670 of March 14. 1910, the Crown conveyed the land to two persons, Baba Singho and Daniel Fernando, who by their deed No. 17,257 of May 24. 1916, sold and transferred it to Enid Fernando. The land Pahalawela is in extent 33 acres 0 roods and 8 perches. At the date of her purchase Enid Fernando was the owner of five other allotments of land, which she had consolidated and was holding as one estate of about 188 acres in extent. Pahalawela was immediately incorporated in that estate, and the whole extent of 221 acres 3 roods and 38 perches, known as Mudugomuwa estate, was by bond No. 15 of June 8, 1916, mortgaged by Enid Fernando and her husband to Arthur Pate.

At the date of this mortgage neither the Crown grant nor any of the other deeds hereinbefore referred to, and under which Enid Fernando claimed title, had been registered. Arthur Pate submitted the bond in his favour for registration. As required by the Registration Ordinance, there was set out on the face of the bond the reference to the volume and folio in which each of the five other lots, which with Pahalawela went to make up Mudagama estate, and with reference to Pahalawela the bond showed that there was no previous registration. It will be seen that the applicant for registration gave the fullest possible information to

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the registering authorities. The bond was registered on June 12, 1916, and the manner in which registration was effected was as follows:—

> The bond was registered in folio H 73/331, a new folio opened in respect of the consolidated land Mudugomuwa estate, and appropriate entries were made in the folio relating to the five allotments in respect of which previous registration had been effected, which sufficiently showed that they had been included in Mudugomuwa estate registerel in folio H 73/331.

On June 28, 1916, the Crown grant in favour of Baba Singho and Daniel Fernando and their transfer to Enid Fernando were both registered; they were registered in folio H 73/358. Arthur Pate put his bond in suit towards the end of the year 1920, and in September of that year Enid Fernando and her husband sold and transferred their interests in Pahalawela by deed No. 216 of September 12, 1920, to the plaintiff and the defendant. That deed was registered in the folio H 73/358.

Arthur Pate obtained judgment, and in execution Mudugomuwa estate was sold and purchased by him. The decree in that action as well as the transfer in his favour dated May 17, 1922, were registered in folio H 73/331. In the following year, by deed No. 406 of May 7, 1923, registered in folio H 73/331, Arthur Pate conveyed all his interest to the added defendant, who is the respondent to this appeal.

The plaintiff claims the benefit of the registration of the Crown grant and the deed in favour of Enid Fernando, and contends that deed No. 216 of September 12, 1920, in his favour which was registered in the same folio takes priority over the mortgage bond in favour of Arthur Pate. The competition is between deed No. 216 of September 12, 1920, registered in folio H 73/358 and the mortgage bond No. 15 of June 8, 1916, registered in folio H 73/331.

The mortgage bond is prior in date, and prior also in date of registration to deed No. 216 of September 12, 1920, and prior also in respect of registration of the earlier deeds under which Enid Fernando obtained title.

It is urged on behalf of the plaintiff that his deed is entitled to priority because it is registered in the right folio. The right folio is the folio in which the first deed dealing with the land is registered (see *Silva v. Appu* [1]). There can be no question that the mortgage bond No. 15 of June 8, 1916, created a valid mortgage over Pahalawela, and that it is included within the limits assigned to Mudugomuwa estate in the bond and in the land register. If, therefore, the rule in *Silva v. Appu* (*supra*) is to be the only test, the right folio is the folio H 73/331, in which that bond was registered.

[1] *4 Bal. Notes of Cases, 28.*

But Counsel's main contention is that this mortgage bond has not been " so registered " within the meaning of section 17 so far as it relates to Pahalawela, in that there is no entry in the register clearly referring to Pahalawela. The argument is that Pahalawela before it was incorporated in Mudugomuwa estate was what is referred to as a separate land, and that every such land is required by law to be the subject of a separate registration entry. The underlying fallacy is that an allotment of land held at any time as a separate entity must be deemed to retain that character ever afterwards, even though it may have been consolidated with other lands and merged into one large holding, or on the other hand split up into several smaller lots each separately held. I am aware of no such rule. The Registration Ordinance provides for the registration of documents relating to land. It is not a register of lands but of documents which is contemplated by that Ordinance, for it is only concerned with lands or allotments of land in so far as they are the subjects dealt with, in and by registered documents.

When a document relating to a land, in respect of which no document had been previously registered, is registered, that piece of land is impressed with a special character, for the law requires that thereafter all subsequent dealings relating to it shall be registered in the same folio; it is immaterial that the land is the result of the consolidation of several smaller allotments so long as those allotments were not the subject of previous registration. Where all or any of the parts of a land referred to in a deed which it is sought to register had been the subject of previously registered deeds, the law requires that appropriate entries should be made in each of the folios in which any of such parts had been registered calling attention to the registration of the consolidated land. If Counsel's contention is to prevail, then, whenever it is desired to register a deed relating to land which at some time in the past consisted of two or more separately held lands in respect of which no deed or document had been registered, the applicant for registration must first cause an entry to be made in the register in respect of each of these several allotments, and in each of the folios thus brought into being an entry referring to the registration of the deed dealing with the land thus consolidated. There is nothing in the Ordinance to support this contention. Indeed, it may often be impossible to conform to it if such a rule of registration did in fact exist. It often is the case that there is no deed for a portion of a large holding, and no title except prescription. In such a case it is quite impossible to cause a separate entry to be made in respect of that portion in the register, for no such entry is possible without a deed.

The mortgagee has done all that the law of registration in the Colony requires. His bond has been duly registered, and it is admitted and proved that it is a good and sufficient mortgage

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of the whole of Mudugomuwa estate, which includes what once was known as Pahalawela. It is duly registered, is prior both in date of execution and in date of registration, and the title which passed thereunder is entitled to prevail.

The appeal is dismissed, with costs.

DALTON J.—

This appeal raises a question under the Land Registration Ordinance, No. 14 of 1891.

In the action for the partition of a land called Pahalawela the plaintiff claimed half the land, allotting the remaining half to the defendant. The added defendant intervened and claimed the whole of the land for the Salvation Army, the trial Judge deciding in favour of the latter claim.

The plaintiff's case was that the Crown granted Pahalawela, 32 acres in extent, in 1910 (P2) to one Don Baba Singho and Daniel Fernando. This grant was registered on June 28, 1916, folio H 73/358. By deed P3 dated May 24, 1916, they conveyed the land to Enid Fernando, wife of one Joseph Gregory Fernando. This deed P3 was registered in the same folio as the foregoing one, but on June 24, 1916. This was the first registration of the land Pahalawela. By deed P4 Enid Fernando conveyed the land to the plaintiff and the defendant on September 17, 1920, the deed being registered in the same folio on October 7, 1920.

The added defendant, the respondent in the appeal, sets up that Pahalawela forms part of an estate called Mudugomuwa, containing 221 acres. Both Mudugomuwa and Pahalawela existed as separate lands prior to 1916, Pahalawela being one of several contiguous allotments going to make up the Mudugomuwa estate. It appears that in 1916 by deed D2 Enid Fernando and her husband mortgaged Mudugomuwa estate to one Arthur Pate. This deed was registered on June 12, 1916, in folio H 73/331, a new folio being started as this was the first registration of Mudugomuwa; the deed sets out in the schedule six contiguous allotments of land which it is stated go to make up Mudugomuwa estate. The second allotment mentioned is the land Pahalawela. The bond was put in suit by the mortgagee in 1920; he obtained a decree thereon, and purchased the mortgaged property himself at the resulting sale. The decree was registered on September 14, 1921, Fiscal's transfer obtained in May, 1922, and registered on May 24, 1922 (folio H 73/331). In May, 1923, Pate by duly registered deed donated the land Mudugomuwa to the Salvation Army.

The ground of appeal upon which appellant relies is that the registration of Mudugomuwa estate incorporating Pahalawela does not comply with the requirements for registration, for the registration of the deed D2 is not the registration of any dealing

with Pahalawela, the Ordinance requiring every land to be separately registered, *i.e.*, the formalities in respect of registration to be carried out in respect of each separate land mentioned in the deed, and that the omission to register the mortgage of Pahalawela separately resulted in a total defect in respondent's title, the registration of D2 being no registration within the meaning of the Ordinance. It should be noted that Mr. Perera expressly stated he could raise no ground for appeal based upon any registration in a wrong folio.

The question to be answered in this case is whether or not the registration of D2 (the mortgage of Mudugomuwa) is a registration of a mortgage of Pahalawela. I am unable to see how it can be said to be anything but the registration of a deed affecting the whole estate mentioned therein comprising the six allotments set out. As it is the registration of a deed respecting the whole, so it is a registration of a deed respecting each part of the whole. Nothing that has been adduced in argument satisfies me that the requirements of section 16 of the Ordinance have not been complied with. The registration has been duly endorsed on the document, and in addition the deed contains a statement in conformity with the provisions of section 24 of the number and folio of the register in which each allotment which goes to make up Mudugomuwa has been previously registered. The second allotment, Pahalawela, had not been previously registered as a separate entity, and hence there was nothing to be done as regards this particular land under the provisions of section 24. It is expressly stated on the deed, and correctly stated, that when D2 was registered Pahalawela was unregistered. It is allowable to an owner to consolidate several lands and constitute out of them a distinct *corpus*, as pointed out by De Sampayo J. in *Fernando v. Perera*,[1] but in such a case the decision in *Mariku v. Fernando*[2] applies. In *Senaratna v. Peris*[3] Wood Renton C.J. says:—

> "It was held by this Court in *Mariku v. Fernando* (*supra*) that where two lands previously registered are consolidated and registered in a different folio without reference to the previous registration of the separate lands the registration was made in the wrong folio. The present case comes directly within the *ratio decidendi* in *Mariku v. Fernando* (*supra*), that where a property has once been registered all subsequent dealings with it must, in order to satisfy the requirements of section 24 of the Land Registration Ordinance, 1891, be entered in the same folio as that of the original registration."

It is apparent on the facts that these two authorities are of no assistance to the appellant here. It is urged for him, however, that if one has regard to the general intention of the Ordinance

[1] *20 N. L. R. 119.*

[2] *17 N. L. R. 481.*

[3] *4 C. W. R. 65.*

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the deed D2 should have been registered, not only under the name of Mudugomuwa, but also in separate folios under the names of each of the six separate allotments also, to make the registration complete. I am unable to read that requirement into the Ordinance. Section 15 requires the keeping of books, "so that every deed relating to lands . . . . may be registered therein so as to facilitate reference to all existing alienations or incumbrances affecting the same lands." Folio 331 contains a cross reference to all the registrations of the separate allotments. Under the rules dealing with the index to the register it is true that it is laid down that if a land has more than one name it must be indexed under each name. That, however, is a duty placed upon the Registrar. It might be pointed out that a personal index is kept as well as a local index. If that rule can be applied to the circumstances of this case, and if there has been any failure here to comply with that rule (and I am not satisfied that it has been shown that there has been any such failure), it still seems to me that the person registering D2 has done all that the law requires of him to effect registration. As Wood Renton C.J. points out in *Cornelis v. Abiasinghe* [1]: "it is quite reasonable that they (grantees of deeds) should be required to see that their deeds are registered in accordance with the requirements of the law so as to facilitate reference in the language of section 15 (1) of the Ordinance itself." He is referring to cases which deal with the meaning of the words "unless so registered" in section 17, and he adds "the decisions in question have turned on the presence of negligence of some kind or other on the part of the applicant for registration. The Supreme Court has not yet, I think, held that an applicant for registration would be deprived of his priority by the sole and gratuitous fault or mistake of the registering officer." That was the position in 1913 when that case was decided, and it is the position I understand to-day.

For the above reasons I would hold that the decision of the trial Judge was correct, and that this appeal should be dismissed, with costs.

Appeal dismissed.

[1] *5 Bal. Notes of Cases 30.*