Present: Wood Renton A.C.J. and Perera J. 1913

HEVAWITARANE *et al. v.* DANGAN RUBBER CO., LTD.

14—D. C. Kurunegala, 3,886.

Bona fide *possessor—Claim to compensation—Notice of claim by owner—Is possession thereafter* mala fide?—*Right of co-owner to sue trespasser for ejectment from the whole land—Service Tenures Ordinance—Entry in register*—Paraveni—Maruwena.

Possession by a purchaser of land does not become *mala fide* by the mere notice of an adverse claim given by a person claiming adversely to the purchaser (or his vendor).

A *bona fide* possessor need not necessarily be the owner of the property possessed, nor need he have a legal right to possess it. It is sufficient if his possession is the result of an honest conviction in his mind of a right to possess.

The entry of any land in the register prepared under the Service Tenures Ordinance, 1870, as a *paraveni* land belonging to a specified tenant is conclusive evidence as to the nature of the tenure and relevant, but not conclusive evidence as to the identity of the tenant.

When a temple land is not entered in the list of *paraveni* lands of the temple, the necessary inference, at any rate unless some adequate explanation is given for the omission, is that the Commissioners had determined that the tenure of the lands was not *paraveni* but *maruwena*.

The owner of an undivided share of land might sue a trespasser to have his title to the undivided share declared, and for ejectment of the trespasser from the whole land.

THE facts have been stated as follows by the Acting Chief Justice:—

The subject-matter of the dispute in this action consists of several blocks of land admittedly falling within the *gama* of the Ridi Vihare in the District of Kurunegala. The plaintiffs, who are partners in the firm of Don Carolis & Sons, Colombo, allege that

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these are *paraveni* lands, and claim them on a series of deeds executed by some of the *paraveni nilakarayas* on October 15, 1906. The first added party—the Dangan Rubber Company, Limited—alleges that the lands in question are the property of the Ridi Vihare itself, and as such are vested in its trustee. The trustee, on April 25, 1906, leased them for fifty years to Herat Ranasinghe Mudiyanselage Ukku Banda. Ranasinghe's lease, which was executed with the consent of the Provincial Committee under the Buddhist Temporalities Ordinance and the sanction of the District Judge of Kurunegala, has been assigned by various mesne conveyances to the first added party. The plaintiffs claim a declaration of title to the lands in suit, the ejectment of the first added party therefrom, and damages. The first added party claims to hold the lands under Ranasinghe's lease, and, in the alternative, if the plaintiffs succeed on the issue of title, compensation for improvements. The learned District Judge has declared the plaintiffs entitled to the lands, with damages at the rate of Rs. 630 per annum from January 27, 1910—the date of the ouster alleged in the plaint—till their restoration to possession, and with costs payable by the first added party. The claim of the latter to compensation is rejected. If compensation had been due, the District Judge would have fixed it at Rs. 6,000. The first added party appeals. Ranasinghe's lessor was not made a party to the action, nor was he examined as a witness at the trial. The present trustee of the Ridi Vihare—Delwita Tikiri Banda—was, however, made second added party, and called as a witness by the plaintiffs. He is affected by the decree of the District Court only to this extent, that he has been left to pay his own costs. Against this order he has not himself appealed, and he has not been made a respondent to the appeal by the company. The same observations apply to the original defendant, Mr. Barnes. He is the superintendent of Ridigama estate under another company—the Kurunegala Rubber Company—and is not concerned personally with the matters here in dispute. The only parties to this appeal are the Dangan Rubber Company and the plaintiffs.

Elliott (with him *B. F. de Silva*), for the first added party, appellant.

H. J. C. Pereira (with him *F. M. de Saram*), for the plaintiffs, respondents.

G. Koch, for the second added party.

Cur. adv. vult.

October 14, 1913. Wood Renton A.C.J.—

His Lordship stated the facts, and continued:—

On two points—the rejection of the company's claim for compensation and the award of damages in the plaintiffs' favour—the

judgment under appeal, in my opinion, cannot stand. The District Judge himself says that the company "undoubtedly paid substantial consideration" for its purchase, and that "no charge of speculation" can fairly be brought against it. He holds it to be a *mala fide* possessor, however, and, therefore, disentitled to compensation, because the work of developing the estate was continued without inquiry after the plaintiffs had, by their letter dated January 28, 1907 (A D 1), warned Mr. Martin, one of the syndicate, from whom the company purchased, of their claim. But mere notice of an adverse claim is not sufficient to establish bad faith against a purchaser. "A *bona fide* possessor need not necessarily be the owner of the property possessed, nor need he have a legal right to possess it. It is sufficient if his possession is the result of an honest conviction in his mind of a right to possess." (*Pereira, Right to Compensation for Improvements, pp. 21, 22.*)

Whether or not in the circumstances of this case the plaintiffs have succeeded in making out a *prima facie* title to the lands in suit, the title is undoubtedly one that the company, holding a lease from the trustee of the vihare within whose *gama* the lands lie, might reasonably think itself justified in disregarding. The evidence of Ranasinghe, corroborated by that of Mr. Long Price, who took the first mesne assignment of the lease, and of Mr. Daniels, the surveyor, shows that as far back as April, 1906, Ranasinghe was clearing portions of the land, not only to the knowledge of, and without any objection by, the villagers, but with the assistance of some of them. Mr. Palipane, Ratemahatmaya of Weudawili hatpattu, produced an alleged petition (P 17) dated May 10, 1906, by seventeen inhabitants of Ridigama, complaining that the trustee had surveyed their lands with the object of leasing them to Mr. Price, and stated that he had reported on this petition and communicated its purport to Mr. Price, both orally and in writing. Mr. Price had no recollection of any such communication having been made to him. But no doubt his memory may have been at fault in the matter. None of the villagers alleged to have signed the petition were, however, called as witnesses to prove the fact, and in view of the affirmative evidence of the participation of villagers in Ranasinghe's operations, as well as of the character of the lease, the incident is wholly insufficient to bring home *mala fides* to the company. It is unnecessary to labour this part of the case further, as the plaintiffs' counsel very fairly admitted that the company had a strong case on the question of compensation, and did not reinforce the observations of the learned District Judge on the subject by any arguments of his own. The quantum of compensation presents no difficulty, inasmuch as counsel for the company, on an expression of opinion by the Court that the amount assessed by the District Judge was reasonable, at once said that he was prepared to accept it if his appeal failed on the main issue.

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The award of damages to the plaintiffs cannot be justified, in view of their delay of three years in taking proceedings for the vindication of their alleged rights, and there is no evidence of any ouster on January 27, 1910.

We come now to the question of title. The lands, as I have said, admittedly fall within the *gama* of the Ridi Vihare. That fact gives rise, however, to no presumption as to the nature of their tenure. The burden of proving, in the first place, that the lands are *paraveni* and, in the second place, that they or their predecessors in title are *paraveni* tenants of these lands, rests on the plaintiffs. The entry of any land in the register prepared under the Service Tenures Ordinance, 1870 (No. 4 of 1870), as a *paraveni* land belonging to a specified tenant is conclusive evidence as to the nature of the tenure (section 11) and relevant, but not conclusive evidence as to the identity of the tenant (*Punchirala v. Ding*,[1] and *cf. Francina v. Madduma Banda*,[2] *Samarasinghe v. Weerapulia* [3]. "When a temple land is not entered in the list of *paraveni* lands of the temple, the necessary inference, at any rate unless some adequate explanation is given for the omission, is that the Commissioners had determined that the tenure of the lands was not *paraveni* but *maruwena*." (*Per* Lascelles C.J. and Grenier J. in *Tikiri Banda v. Ranasinghe Mudalige Appoohamy*.[4])

The first point to be determined, therefore, is whether each of the lands claimed by the plaintiffs is shown by the register to be a *paraveni* land. A translation (P 12) of the register, accepted by both sides as correct, has been put in evidence. I have checked in it the names of each of the lands in the various groups enumerated in the decree. The lands Ehalapurana, Pahalapurana, Medapurana, and Bogahamulahena, located by the witness Kirihami as south of the ela, and, therefore, outside the limits of the blocks in dispute, must be excluded. But the register does show the names of lands either identical with those for which decree has been entered, or so clearly resembling them as to make it difficult to doubt their identity, as being lands held by *paraveni* tenure. If this be so, and if the lands in question are proved to be those in dispute, it follows that the trustee for the vihare had no right to lease them, as they were not the property of the temple, and that the company, holding under the trustee, is merely a trespasser, liable to ejectment by the *paraveni* owners, should these come forward to enforce their rights. Have the plaintiffs succeeded in locating the lands which they claim?

His Lordship discussed the evidence, and continued:—

To this body of general evidence as to the location of the *panguwas* must be added the testimony of individual witnesses as to the

[1] *(1884) 6 S. C. C. 157.*
[2] *(1876) Ram. 1872-76, 307.*
[3] *(1882) 5 S. C. C. 40.*
[4] *(1912) S. C. Mins., March 5, 1912.*

location of particular henas. From the nature of the case, exact evidence as to the boundary and the extent of each hena is not to be looked for. But the witness Mudiyanse locates the henas sold by him with fair precision as to three of the boundaries, and the boundaries so given are sufficient to bring the henas within Mr. Weeraratne's survey plan. The same observation applies to the evidence, so far as it goes, of the priest Sumanankara and of Leanaralage Mudianse as to Uyanwatta. On the whole, after making full allowance for the vagueness, and in some respects infirmity, of the evidence, I think that the plaintiffs have succeeded in establishing a *prima facie* identification of the lands in dispute with those of the same name entered in the register as *paraveni* lands. Have they succeeded also in showing that the vendors through whom they claim are *paraveni* owners? It must be borne in mind that when once the lands in dispute have been shown to be *paraveni* lands, acquired by the company from the trustee of the temple without the *paraveni* owners' consent, the company is in the position of a trespasser, and cannot meet the plaintiffs' claim by pleading that some of the *paravêni* co-owners have not joined in the transfers on which they rely. Any co-owner, or party claiming under such a co-owner, is entitled to eject a trespasser from the whole of the common property. (*Unus Lebbe v. Zayee*,[1] *Greta v. Fernando*,[2]) Moreover, *prima facie* evidence of title is all that is required in such an action. *Prima facie* evidence of title, of course, there must be. In this connection I may notice in passing a point made by counsel for the company on the strength of evidence given by Lansakara Mudiyanselage Mudiyanse to the effect that about six of the lands sold by him were included in a previous deed of gift by his father in favour of his stepsister Punchi Menika. As regards these lands, it was argued there was not only no evidence of title, but positive disproof of title. This argument might have prevailed if some attempt had been made to identify these donated lands in the District Court. But although Mudiyanse stated that the deed of gift gives the boundaries of the lands comprised in it, he does not seem to have been asked to produce it, or to have been questioned as to what the names of these lands are. The evidence of Mudiyanse on this subject appears to have been used merely for the purposes of the general attack on the plaintiffs' title as a whole.

His Lordship further discussed the evidence as to title, and continued:—

I have now, I think, examined the whole body of evidence on which the plaintiffs rely. It is in many respects vague and unsatisfactory. But precise evidence in support of title to lands of the character that we have here to deal with cannot readily be

[1] *(1893) 3 S. C. R. 56.*

[2] *(1905) 4 Bal. 100.*

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procured. In view of this circumstance, and of the failure of the company to call the trustee to warrant and defend the title which he conveyed to Ranasinghe, I am not prepared to say that the *primâ facie* evidence does not justify a declaration of title and a decree for ejectment in the plaintiffs' favour. I think that the plaintiffs and the company should each bear their own costs of the action and of the appeal.

The formal judgment will be pronounced by my brother Pereira.

PEREIRA J.—

In this case the plaintiffs claim a declaration of title to, and seek to eject the first added party appellant from, certain allotments of land which are part of the viharagama of the Buddhist temple known as the Ridi Vihare. These allotments of land are mainly chenas or kenas, which may be classified, as the District Judge has done, in the following five *panguwas*:—

(1) Lansakara Tennekoon Mudiyanselage panguwa.
(2) Herat Mudiyanselage panguwa.
(3) Two contiguous panguwas, which may be referred to as the Naide panguwas.
(4) Bomeria Dalupota panguwa.
(5) Gammahe panguwa.

Of the *panguwas* mentioned here, the fourth is not in dispute now, and nothing more need be said about it.

The lands of the viharagama referred to above appear to have been brought under the operation of the Service Tenures Ordinance, 1870, and the *paraveni panguwas* of the viharagama appear to have been registered in a register prepared under section 11 of the Ordinance. Document P 12 is a copy of that register. Under section 11 of the Ordinance the register, of course, is the best evidence of the nature of each *panguwa*. The contention of the plaintiffs is that the *panguwas* claimed by them are entered in the register as *paraveni panguwas*. If so, of course the plaintiffs are entitled to succeed in this action, provided they succeed in tracing title from persons whose names are entered in the register as those of the *paraveni* tenants.

His Lordship discussed the evidence, and continued:—

I think there is on the whole amply sufficient evidence of identity of the *panguwas* claimed by the plaintiffs with the *panguwas* entered as *paraveni* property in the Service Tenures Register. This is a clear indication that the appellants had no title whatever to the lands claimed by the plaintiffs, and that they were mere trespassers on them.

It appears that, as regards the Naide panguwas and Uyanwatta, the plaintiffs are entitled to only certain shares of the lands comprised in them. The appellants' counsel attempted to make a strong point of this fact in favour of his clients, but the mere fact that the plaintiffs are entitled, as regards some of the lands claimed, to an undivided share does not necessarily defeat the action. As regards the rights of owners of undivided shares of land to sue trespassers, I have always understood the law, both before and after the coming into operation of the Civil Procedure Code, to be that the owner of an undivided share of land might sue a trespasser to have his title to the undivided share declared and for ejectment of the trespasser from the whole land, the reason for this latter right being that the owner of the undivided share has an interest in every part and portion of the entire land (see section 12, Civil Procedure Code; *Unus Lebbe v. Zayee;* [1] *Greta v. Fernando;* [2] *Arnolisa v. Dissan* [3]).

As regards the appellants' claim to compensation for improvements, the District Judge has held that they were *mala fide* possessors. It is not necessary that I should give my reasons at length for my decision on the question here involved, or on that as to the sufficiency of the amount of compensation as assessed by the District Judge, because the respondents' counsel on the one side, and the appellants' on the other, did not seriously press their respective contentions. I *do not think that there is anything* in the evidence to show that the appellants did not act in the honest belief that they were entitled to the lands in dispute. The mere fact that a claim was made to them by the respondents is insufficient to show that the appellants acted *mala fide*, especially in view of the fact that the respondents took no action to have their rights declared by the Court for nearly three years. I see no reason to doubt that the appellants were *bona fide* possessors in the strict sense of the term, and I hold that they are entitled to compensation; and I also think that the amount of compensation as assessed by the District Judge is fair and reasonable.

I would vary the decree—

(1) By declaring the plaintiffs entitled to the henas, fields, &c., mentioned in it of (a) Lansakara Tennekoon Mudiyanselage panguwa, (b) the Herat Mudiyanselage panguwa, and (c) the Bomeria Dalupota panguwa, and to shares of the henas, &c., mentioned in the decree of Uyanwatta and Naide panguwas, with the exception of the henas Ehalapurana, Pahalapurana, Medapurana, and Bogahamulahena, and, subject to the *jus retentionis* hereinafter mentioned, directing the ejectment of the first added party from all those lands.

[1] *(1893) 3 S. C. R. 56.* [2] *(1905) 4 Bal. 100.* [3] *4 N. L. R. 163.*

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(2) By deleting the order for payment of damages (Rs. 630 per annum) by the first added party.

(3) By awarding to the first added party Rs. 6,000 as compensation for improvements, giving him also the right of retention of the property improved until that sum is paid.

In the circumstances, I think that each party should bear his own costs in both Courts.

Varied.