

1937

*Present : Poyser and Soertsz JJ.*CHELLIAH PILLAI v. DEVADASON *et al.*

369—D. C. Colombo, 2,365.

Registration—Deed registered in wrong folio—Cross-references to right folio—Competing deed registered later in right folio—Priority—Ordinance No. 23 of 1927, s. 15.

Where a deed is registered in the wrong folio but there are cross-references sufficient to facilitate references to all existing alienations and encumbrances affecting the land, the new folio must be regarded as a right folio from the time the cross-references are made.

Mudalihamy v. Punchibanda (5 C. L. Rec. 73) followed. *Ramasamy Chettiar v. Palaniappa Chettiar* (13 C. L. Rec. 98) referred to.

A PPEAL from a judgment of the District Judge of Colombo.

N. E. Weerasooria (with him *E. B. Wikramanayake*), for first defendant, appellant.

H. V. Perera (with him *J. R. Jayawardene*), for plaintiff, respondent.

D. S. P. Abeyssekere (with him *Olegasagarem*), for second defendant, respondent.

Cur. adv. vult.

February 19, 1937. POYSER J.—

The only question that arises on this appeal is whether the plaintiff's deed, Fiscal's Transfer No. 16,839 of November 8, 1934, takes priority over the first added defendant's deed No. 2,254 of December 1, 1924, by reason of due registration.

The material facts, which were admitted, are as follows :—The plaintiff's deed is registered (B 301/115) in a continuation of the folio in which the first deed relating to the land in question was registered and therefore is correctly registered. (See *Jayawardene on Registration of Deeds*, p. 141, and the cases there cited.)

The first added defendant's deed is registered in another folio (B 170/238), which was commenced on September 3, 1919. These two folios, however, are connected by cross-references. In the top left hand corner of the folio where the plaintiff's deed is registered, there appears the following :—“See B 170/238”. Similarly in the top right hand corner of B 170/238 there appears “See B 243/254” (B 301/115 is a continuation of B 243/254).

In regard to the cross-references, there was no evidence or information as to when they were entered, and Mr. Perera argued that as the first entry in B 170/238 was September 3, 1919, and the first entry in 243/254 was September 27, 1927, such cross-references could not have been entered before 1927. This is a logical argument, but Mr. Perera conceded that the cross-references in 243/254 must have been entered before his deed was registered in 1934.

I propose to deal with this appeal on the footing that the cross-references were not entered before 1927. The question therefore is whether the first added defendant's deed was duly registered in 1927, for if it was, it takes priority over the plaintiff's deed.

The learned District Judge has held that, as there was no doubt as to the identity of the land, a new folio should not have been opened and the cross-references are consequently of no avail, and in support of this finding he refers to regulation 13 (3) of the regulations made under the Regulation of Documents Ordinance, No. 23 of 1927, dated January 6, 1928. This regulation lays down that the Registrar shall only register an instrument in a new folio if he is doubtful as to the identity of the land and shall connect the two folios by cross-references.

This regulation, however, was not in force when the first added-defendant's deed was registered, consequently even if the District Judge's interpretation of this regulation was correct, which I am not prepared to admit, this case cannot be decided on such interpretation.

In my view the added first defendant's deed was duly registered so far as the plaintiff is concerned and this view is amply supported by authority. The case of *Mudalihamy v. Punchibanda*¹ was very similar to this. The head note is as follows:—"The defendant's deed was registered in the wrong folio, but there was a side entry containing a reference to the right folio. The plaintiff's deed was registered in the right folio which also contained a reference to the folio in which the defendant's deed was registered. Held that the defendant's deed was duly registered. Schneider J. in the course of his judgment, states:—"These references, in my opinion, establish a connection between the volumes and folios in which the two competing deeds are registered sufficient 'to facilitate reference to all existing alienations or encumbrances affecting' the land in claim within the meaning of sections 15 and 16 of 'The Land Registration Ordinance, 1891'. I am unable to understand why the Registrar had not registered the defendant's deed in the same volume and folio in which he had registered the plaintiff's deed. The name of the land, the boundaries, and other particulars are identical".

In this case also I am unable to understand why the Registrar did not register the first added-defendant's deed in the same volume and folio in which he had registered the plaintiff's deed, but whatever his reasons may have been, the fact that the right and wrong folios were eventually connected by cross-references enables the first added-defendant's deed to be treated as duly registered so far, at any rate, as the plaintiff is concerned.

Further, section 15 of Ordinance No. 23 of 1927, which applies (subsection (2)) to instruments whether registered before or after the commencement of the Ordinance, contains a proviso which appears to meet this case. The material part of the section is as follows:—

"Every instrument presented for registration shall be registered in the book allotted to the division in which the land affected by the instrument is situated and in, or in continuation of, the folio in which the first registered instrument affecting the same land is registered.

"Provided that—

"An instrument may, if the Registrar thinks fit, be entered in a new folio, cross-references being entered in the prescribed manner so as to connect the registration with any previous registration affecting the same land or any part thereof".

This proviso would appear to give legislative effect to the decision in *Mudalihamy v. Punchibanda* (*supra*) and other reported cases on this point.

I would also refer to a later case, *Ramaswamy Chettiar v. Palaniappa Chettiar*² in which it was held, following *Silva v. Appu*³ in connection with the question of the right or wrong folio for registration, that the right folio for registration of a deed was the one in which the first deed relating to a particular land had been registered. In this case there were no cross-references and as appears from the judgment of Dalton J., at page 98, if there had been such cross-references, this case would probably have been differently decided.

¹ 5 Ceylon Law Recorder 73.

³ (1914) 4 Bal. N. C. 28.

² 13 Ceylon Law Recorder 98.

In view of the authorities cited, I would allow this appeal with costs both here and in the Court below and direct that a hypothecary decree be entered for the first added-defendant as prayed.

SOERTSZ J.—

I agree. At one stage, I was impressed by Mr. Perera's argument that a new folio opened by the Registrar without cross-references to the old folios was a wrong folio, and continued to be a wrong folio even though the requisite cross-references were made upon it later. But on further consideration I am of opinion that the words of proviso (a) of section 15 of Ordinance No. 23 of 1927 are wide enough to support the interpretation that a new folio must be regarded as a right folio from the time the cross-references were entered. As pointed out by my brother, it was conceded in this case that when the plaintiff's deed came to be registered there were cross-references on the new folio sufficient to facilitate reference to existing alienations and encumbrances. Therefore, I agree that the first added-defendant's deed must be "treated as duly registered as far, at any rate, as the plaintiff is concerned".

I subscribe to the order made by my brother.

Appeal allowed.
