

1973 Present : H. N. G. Fernando, C.J., and Deheragoda, J.

R. P. HEENAPPUHAMY, Appellant, and W. CHARLES and  
3 others, Respondents

S. C. 208/69 (Inty.)—D. C. Tangalle, 1198/P.

*Registration of Documents Ordinance (Cap. 117)—Sections 7, 14—Deed relating to part only of a land—Proper folio for its registration.*

Where a part only of a land is conveyed by X, the owner of that part, to A and the same portion is subsequently conveyed by X to B, the proper folio for the registration by B of the subsequent deed for the purposes of securing priority of title over the earlier deed to A is still the original folio relating to the larger land or a new continuation folio properly connected to the original folio as required by section 14 of the Registration of Documents Ordinance.

**A**PPEAL from an order of the District Court, Tangalle.

W. D. Gunasekera, for the plaintiff-appellant.

C. Chakradaran, for the 1st and 4th defendants-respondents.

*Cur. adv. vult.*

November 15, 1973. H. N. G. FERNANDO, C.J.—

The only dispute which was the subject of argument in this appeal concerned a question of prior registration. By the deed P2 of 1st April 1965, one Nikulas sold to the plaintiff an undivided 3/32 share of Lot A of a land called Siyambalagahawatte. Four days later by deed 1D4 of 4th April 1965, Nikulas sold the same interests to the 1st defendant.

1D4 was registered on 5th April 1965 in the registration folio No. A 459/78 which has been marked as 1D3. The plaintiff's deed P2 was also registered in this folio on 6th April 1965. The 1st defendant was accordingly the victor in the race for registration, and 1D4 must prevail over P2 if—

- (a) there was no fraud or collusion in obtaining the prior registration of 1D4, and
- (b) 1D4 was registered in the correct folio.

As to the first condition, the learned District Judge found that there was no fraud or collusion, and the 1st defendant is entitled to the benefit of that finding.

The Proctor for the plaintiff argued that the folio 1D3 was not the correct folio for the purpose of the registration either of the plaintiff's deed or of the defendant's deed. There was produced

a folio numbered A. 68/366 marked P7, and it was common ground between the parties that the land registered in the folio P7 was a larger land of which Siyambalagahawatte Lot A (which is the subject of the present action) had earlier formed a part. Prima facie then the correct folio for the registration of the deeds P2 and 1D4 was the folio P7 or a folio maintained in continuation of P7 and duly connected with P7. The folio P7 however contains no reference to any continuation folio, although there are incidental references to other folios. Furthermore the folio 1D3 relied on by the 1st defendant contains no reference either to P7 or to any of the folios incidentally mentioned in P7. It is accordingly clear neither the plaintiff's deed P2 nor the defendant's deed 1D4 was duly registered in the earliest folio relating to this land or in a folio properly connected to the earliest folio.

The plaintiff has however been deprived of the benefit flowing from this situation on grounds which cannot be supported.

The parties in this case agreed that the larger land Siyambalagahawatte had been partitioned about 70 years ago in a Partition case. There was produced at the trial an order of the District Court of Tangalle for partition of Siyambalagahawatte according to the shares specified in the order and for the issue of a commission for a partition of the land. There was also produced the return to that commission together with a plan and schedule of allotments dividing the land into Lots A to G and allotting these Lots to specified defendants. The learned District Judge in the present case however has assumed that this scheme of partition had not been acted upon, because there was not produced any final judgment or decree in the earlier partition case. He thought that what had actually happened was that the parties had entered into possession of the respective Lots shown in the Partition Plan and had not proceeded to the stage of obtaining a decree for the partition. For this reason he held that the title to the land cannot now be traced back to a partition decree. The view of the District Judge apparently is that the earliest folio P7 would have continued to be the correct folio, only if a partition decree had been registered in that folio, and that because the co-owners amicably entered into possession of defined portions and acquired prescriptive title, further deeds for the defined portions can be duly registered in new and unconnected folios. One passage in the judgment which reflects this opinion is as follows :—

“Taking for example that there was a land of 40 acres which is registered in some folio and a person enters into possession of one acre of that land writes a deed for that

1 acre and registers it without any reference to the larger land, such registration would create, in my view a new land and such a land is not a land that had been partitioned by court or by consent of parties and deeds prepared. Such possession would be .... (illegible) and not a partition of consent where deeds would have to be exchanged between the parties. In the circumstances when in this case after the order of partition, when various parties entered into possession of various parts of this land they in my view created new lands for which fresh registration folios had been started. The new land has no reference whatsoever to the larger land and could not be connected to the larger land as the partition cannot be recognised in law. In the circumstances I am of the view that the registration of this land in the folio ID3 and the preceding subsequent folio is the correct folio and as such registration in such folio would give any party the benefit of prior registration."

With respect I must observe that this opinion reveals a serious misunderstanding of the purpose and scope of the law relating to the Registration of Deeds. The principle of the common law is that if A transfers a land to B by a Deed, and again transfers the same land to C by a subsequent Deed, the earlier Deed to B must prevail, for the simple reason that A loses title upon the execution of the first deed and has no title to convey when he executes the second deed. This priority of the earlier deed recognised by the common law is however liable to be lost by reason of the operation of the statute law of registration. If a deed is not registered, and a subsequent deed is duly registered, then the subsequent deed can prevail (s. 7 of the Registration of Documents Ordinance, Cap. 117). But the subsequent deed can enjoy this priority only if it is *duly* registered, and the provision which governs the matter of due registration is contained in s. 14 of the Ordinance. If a deed relating to a particular land has been registered, then any subsequent deed relating to the same land is duly registered *only* if it is registered in the same folio as the first deed or in a folio maintained in continuation of the earlier folio; and the new folio is the proper folio only if cross references in both such folios clearly establish that the later folio is a continuation of the earlier one. There is no exception to this rule for a case in which a part only of a land is dealt with by a subsequent deed. The proper folio for the entry of such subsequent deed is still the original folio or a new continuation folio properly connected to the original.

In the instant case the defendant's deed was registered in a new folio, but the new folio was not connected as required by

s. 14 with the original folio 17 in which a deed affecting the larger land Siyambalagahawatte was first registered.

For these reasons we allowed this appeal after hearing the argument of counsel, and made order for the amendment of the Interlocutory Decree to give effect to our order.

DEHERAGODA, J.—I agree.

*Appeal allowed.*

