1936 *Present :* **Abrahams C.J. and Fernando A.J.**

PEDRICK APPUHAMY *v.* EKMAN SINGHO *et al.*

88—D. C. Kalutara, 17,976.

Public document—Register kept by Vel-Vidane—Not on official duty—Evidence Ordinance, s. 74.

A register kept by a Vel-Vidane for his own information and not in pursuance of an official duty imposed on him is not a public document within the meaning of section 74 of the Evidence Ordinance.

APPEAL from a judgment of the District Judge of Kalutara.

H. V. Perera (with him *J. L. M. Fernando*), for plaintiff, appellants.

A. W. H. Abeysundera and *M. T. de S. Amerasekera*, for defendants, respondents.

August 28, 1936. FERNANDO A.J.—

In this case the appellants sued the respondents for a declaration that they were entitled to the field described in the plaint, and they claimed title from one Podyappu, the original second plaintiff, who purchased the said field in 1886 at a sale for non-payment of grain tax against one Giro Hamy. The defendants pleaded that the original owner was not Giro Hamy, but Alisan her husband, and alleged that on Alisan's death the title devolved on his widow Giro Hamy and her son Charles. They

further pleaded that Giro Hamy and Charles had executed certain transfers by which the title was presently in the defendants.

Three issues were framed.

(1) Was the land sold for non-payment of grain tax and purchased by Podyappu ?
(2) Prescriptive rights (of parties).
(3) Damages.

On the first issue the learned District Judge held that the legal title was in the deceased second plaintiff and his successors, and this finding is not challenged. He states in his judgment that it is possible that Podyappu acted on behalf of his sister, and that possession continued in the same way as before the sale but the *onus* to prove that such were the facts was on the defence. He then went on to consider the evidence that was led and ultimately held that " the rights if any acquired by Podyappu on the certificate of sale had been lost by adverse prescriptive possession on the part of Giro Hamy, and her children and their successors in title ". The learned Judge appears to have overlooked the fact that as a principle of law it is not possible in Ceylon to argue that the owner of a land loses his rights by the adverse possession of others. Before his rights can be affected in any way there must be proof that some one else has acquired a title to the land by adverse possession, and it is not open to the person actually in possession at any time to tack on his period of possession to the period during which people other than his predecessors in title had been in possession before him.

The learned Judge bases his finding in favour of the defendants chiefly on the entries in the document X 1 which he admitted in evidence. X 1 contains certain entries made by one Karunaratne who formerly held the office of Vel-Vidane, and there is one entry with regard to the field in question to the effect that in 1919-1920 the portion referred to as number 2, was owned and actually cultivated by five persons whose names are given, and among those names are Giro Hamy and Podyappu. The person who made the entry was not called. The evidence shows that he was alive and available as a witness, and the document appears to have been admitted by the learned District Judge as a public document. There is nothing however to show that the Vel-Vidane as such was under any public obligation to keep a document in the form of X 1. According to the witness Don Carolis, these books are entered up when the Mudaliyar sends orders, and names are entered at the request of the owners. He also states that not all the fields in the villages are entered in the book. In *Ramanathan v. Ponniah*[1] it was held that a temple register prepared by some clerk in the Kachcheri, who is under no obligation to keep such a register, and which register was merely compiled for the information of the Government Agent, was not a public document within the meaning of section 74, of the Evidence Ordinance. That section refers to documents forming the acts or records of the acts of the Sovereign authority, of official bodies and tribunals, of public officers, legislative, judicial, and executive, and unless it can be proved that a document is regularly kept as required by law, and that entries in such document are entries of the actions of public officials within the meaning of this section, it is not a

[1] *(1916) 2 C. W. R. 333.*

public document. From the evidence it would appear that the register in this case was one kept by the Vel-Vidane for his own information, and that the entries in question were made at the request of the persons whose names appear on it, and do not constitute any action of the Vel-Vidane himself. In these circumstances the document merely contains evidence with regard to something that was stated to the Vel-Vidane. It is also curious that the person who made the entries was not himself called to explain how or why the entries came to be made. I would therefore hold that the document was not a public document and was wrongly admitted.

The *onus* of proving that they had acquired a title to the land by prescription was clearly on the defence, and there is no evidence on the record which is sufficient to discharge that *onus*. I would therefore hold that the defendants have failed to prove that they have acquired a title by prescription.

The plaintiffs in their plaint, claimed Rs. 150 as damages for one harvest, and further damages at the rate of Rs. 300 per annum from the date of action, but in his evidence the first plaintiff stated that he leased the land for six years for Rs. 120, and that the ground rent comes only to Rs. 20 a year. There is no evidence to the contrary, and there is no finding by the District Judge on this point. I would therefore set aside the decree of the District Court, and enter judgment declaring the first and the third to the eleventh plaintiffs entitled to the field, and ordering the defendants jointly and severally to pay to the plaintiffs, damages at the rate of Rs. 10 for the harvest immediately before the action, and Rs. 20 per annum from the date of action till the plaintiffs are restored to possession. The respondents will also pay to the appellants their costs of this appeal, and of the action in the Court below.

ABRAHAMS C.J.—

I agree. The learned District Judge bases his conclusions very largely on the entries in a book kept by a former Vel-Vidane of the district where the land concerned was situated. This book was not proved to have been kept in pursuance of any official duty imposed upon the Vel-Vidane, and it would therefore appear to have been kept for the convenience of the Vel-Vidane himself. It cannot therefore be regarded as a public document within the meaning of section 74 of the Evidence Ordinance and ought not to have been admitted as evidence unless produced by the very person who kept it.

But even if it were a public document, far from leading a Court towards a decision it appears to me to tend to confusion. Apparently the entries were made merely on the information of the persons to whom they relate, so that they are at best no more than individual claims to ownership, and when one sees that Giro Hamy and Podi Appu, to say nothing of three other persons, all appear to claim to be owners of the piece of land involved, it may possibly be that they were not definitely claiming ownership but only meant to record the fact of cultivation since they were all kinsfolk.

I would allow the appeal and give judgment for the appellant on the terms set out by my brother Fernando.

Appeal allowed.