

1912.

Present: Lascelles C.J. and Grenier J.

PAARIS *et al.* v. PERERA.

213—D. C. Negombo, 8,222.

Registration in wrong folio—Priority—Ordinance No. 14 of 1897, ss. 15, 16 and 17.

A deed which has been registered in the wrong folio is void as against parties claiming an adverse interest on valuable consideration by virtue of a subsequent deed which has been duly registered.

THE facts are set out in the judgment of Grenier J.

Samarawickreme. for the first defendant, appellant.

H. A. Jayewardene, for the plaintiffs, respondents.

Cur. adv. vult.

February 15, 1912. LASCELLES C.J.—

I entirely concur in the judgment of my brother Grenier. The question of law involved in the appeal is whether a deed which has been registered in the wrong folio is void as against parties claiming an adverse interest on valuable consideration by virtue of a subsequent deed which has been duly registered.

On the construction of the Ordinance, it is clear that the privilege which section 17 of Ordinance No. 14 of 1891 attaches to registered deeds applies only to deeds which have been registered in accordance

with the preceding sections of the Ordinance. The words of section 17 are every deed, &c., unless "so registered" shall be deemed void, &c. Section 15 expressly provides that the registrar shall prepare and keep books for the registration of deeds, "allotting to each book some defined division of the province or district, so that every deed relating to lands situated therein may be registered therein in such manner as to facilitate reference to all existing alienations or encumbrances affecting the same lands."

It is clear that a deed which is not registered in the proper place is not "so registered" for the purpose of section 17. From another point of view the decision embodied in the judgment of my brother Grenier is the only one which would satisfy the equity of the case. I do not desire to say anything here on the ultimate responsibility of the registrar for mistakes such as that which has occurred here; but it is apparent that an error of this nature may involve the person or persons interested, either in the erroneously registered deed, or in the subsequent duly registered deed, in serious loss. As between these two classes of persons, it is equitable that the loss, if any, should fall on the former class. For it is possible for the person who registers a deed to see that it is registered in accordance with the Ordinance, whilst a subsequent purchaser or mortgagee is powerless with regard to the proper registration of previous deeds. The immediate loss, if any, should therefore fall on those interested in the deed which has been improperly registered.

1912.
 LASCELLES
 C.J.
 Paaris v.
 Perera

GRENIER J.—

This is a partition action. The contest is between the first defendant, who is the appellant, and the plaintiffs, who are the respondents, the share in dispute being an undivided one-eighth of the land sought to be partitioned. It was admitted that Marthina was the owner of this share. The plaintiffs' case was that Marthina and Sardial, her husband, transferred the share to Pelis Paaris by deed No. 10,566 dated February 16, 1906, and marked P 1, and that the transferee by deed No. 2,023 dated May 21, 1909, and marked P 2, conveyed to the first plaintiff, the wife of the second plaintiff. Both P 1 and P 2 are duly registered.

The first defendant's contention was that before the sale to the first plaintiff the share in question was sold in execution against Marthina and purchased by Siadoris Appu, who sold it to Alvinu Appu, who conveyed it to Migel Perera, the third defendant. The purchase by Siadoris was on August 26, 1894, and the purchase by Alvinu was on June 1, 1904. It would appear that the first defendant brought an action No. 17,442 in the District Court of Negombo against Alvinu and seized in execution the one-eighth share when the plaintiff claimed it. After the seizure it was that Alvinu conveyed to the third defendant. It will thus be seen that the first defendant has absolutely no right whatever to the share in

1912.

GRENIER J.

*Paaris v.
Perera*

question, nor as far as I can see has he any kind of interest in it. The third defendant disclaims all title to the share, and this being a partition action, the first defendant has no status in it, unless he can show that he is entitled to a share in the land which is the subject of partition. In this state of the facts the plaintiffs were bound to succeed, but there was a question of registration raised, which I think must be decided in favour of the plaintiffs. Both P1 and P2, to which I have already referred, were duly registered. The Fiscal's conveyance in favour of Siadoris, who purchased on August 26, 1894, bears no evidence on the face of it of any registration, but it was apparently conceded in the Court below that the deed was registered, but in another folio. The District Judge found that no registration of the Fiscal's conveyance in favour of Siadoris appeared in the list of incumbrances, and that the boundaries were different from the boundaries given in the other deeds. In the Land Registration Ordinance, No. 14 of 1891, express provision is made for the registration of deeds in a set of books kept for that purpose, to each book being allotted some defined portion of the district or districts or part thereof in manner provided by section 15 (1), which declares the object in the following terms:—"So that every deed relating to lands situate therein may be registered so as to facilitate reference to all existing alienations or incumbrances affecting the same lands."

Now, section 17 enacts that every deed unless so registered shall be deemed void as against all parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent deed which shall have been duly registered as aforesaid. There are certain provisos to section 17 with which we are not concerned in this case. In view, therefore, of the express provisions of sections 15 (1), 16, and 17, it is clear that as the Fiscal's conveyance in favour of Siadoris dated August 26, 1894, was registered in the wrong folio, it must be considered void as against the conveyance by Marthina to Pelis Paaris dated February 16, 1906 (P 1), which was duly registered in the right folio, and the conveyance by Pelis Paaris of May 21, 1909, which was also duly registered in the right folio. It is unquestionable that the interest that the plaintiff claims is an adverse interest within the meaning of section 17.

In *Mohammadu Sali v. Isa Natcha*,¹ which was decided by my brother Wood Renton and myself, we construed sections 15 (1), 16, and 17 of Ordinance No. 14 of 1891 in the same way as I have construed them here. It does not seem possible to place any other construction on those sections.

I would dismiss the appeal of the first defendant with costs in both Courts.

Appeal dismissed.

¹ (1911) 15 N. L. R. 157.

Note.—This case was followed in 46—D. C. Colombo, 32,260 (S. C. Min., April 18, 1912). Lascelles C.J. and Grenier J. declined to reserve the point for a Full Bench.