

Present: Schneider J., Lyall Grant J., and Maartensz A.J.

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DE SILVA v. LAPAYA et al.

136—D. C. Kandy, 31,975.

Registration—Misdescription of village—Right folio—Priority—Land Registration Ordinance, No. 14 of 1891, s. 24.

Where, owing to a misdescription of the village in which a land is situate, a deed affecting the land is registered in a folio different from that in which it would have been registered, had the correct village been given,—

Held, that the deed was not duly registered in accordance with the provisions of the Land Registration Ordinance, and would not have the benefit of priority conferred by the Ordinance.

*Rajapakse v. Fernando*¹ distinguished.

THIS was an action for declaration of title to a land called Edandekumbura, which belonged to one Ganitha, who sold it to his sister Ranee by deed No. 16,119 (P1). On the death of Ranee without issue, Ganitha re-acquired the land by inheritance and sold an undivided half share to Charles Silva by deed No. 111 (P2) dated July 20, 1923, registered on July 21, 1923. Charles Silva sold it to the plaintiff by deed No. 156 (P3) dated March 17, 1924, and registered on March 18, 1924. Deeds P1, P2, P3 were registered in Division D, Volume 57, folios 257 and 258. The land was described in these as situated in the village Hapugaspiya.

The first defendant-appellant bought the land at a sale in execution of a writ and obtained Fiscal's transfer No. 20,223 dated January 18, 1923 (D1). It was registered in 1923 in Division D, Volume 91, folio 74. The Fiscal's transfer describes the land as being situated in village Ratmalkaduwa. The question raised in the case was whether the misdescription with regard to the village

¹ 21 N. L. R. 495.

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H. V. Perera, for defendant, appellant.—The question to be decided is whether the land was properly registered.

In P1, P2, P3, P4 it is registered as a land situate in Hapugas-pitiya.

D1 describes the land as being in Ratmalkaduwa.

Hapugas-pitiya and Ratmalkaduwa are two distinct villages. The land is, in point of fact, in Ratmalkaduwa.

Under section 23 of the Ordinance No. 14 of 1891, the description to be given when a deed is produced for registration includes the name of correct village. The Village Index would refer to a number of folios in the book. According to the Ordinance there should be a separate book for each village. The practice of the Registration Department may not be in compliance with the provisions of the Ordinance.

The Village Index should be regarded as fulfilling the requirements of the Ordinance, for it is the index which gives the necessary information in relation to a land, and to which a person seeking information in practice always refers. Rules by Governor made on August 3, 1923.

Section 17 does not define what registration is. The village must be mentioned carefully. Failure to name the village is fatal to the validity of registration.

Keuneman (with *Navaratnam*), for plaintiff, respondent.—The Registrar has to facilitate the obtaining of information. He keeps a Village Index as a matter of convenience. Two points to be kept in view are (1) Correct division (section 15). Section 16 says that every deed shall be registered in the branch division of the district. See also section 17. The registration must be in the book assigned for the division—no book assigned for the village. (2) The appointed page of the book for a particular land also is necessary. See section 18. Section 23 requires an accurate description of the boundaries of the property, including village or other division. Village is not absolutely necessary. Section 24.

[SCHNEIDER J.—But see the form of the Registrar-General and the Notaries Ordinance, section 29, sub-section 15 (a), at page 724.

The requirements of the Registration Ordinance and the Notaries Ordinance are not identical. The position as regards the two villages is as follows:—In 1870 no village is mentioned. P1, P2, P3, Hapugas-pitiya mentioned. In 1st defendant's Fiscal's transfer, Ratmalkaduwa is mentioned; (1922) D5, Ratmalkaduwa mentioned. 4 *Bal. Notes* 28 as to right and wrong folios; *Fernando v Pulle*¹; *Singho v. Wijesinghe*.²

¹ 2 C. W. R. 75.

² 22 N. L. R. 146.

The name of the village is immaterial, just as in the above case it was held to be immaterial. The plaintiff-respondent registered in the earliest folio. *Rajapakse v. Fernando*.¹ The personal index could have helped the first defendant in the case.

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October 26, 1927. SCHNEIDER J.—

This appeal was first argued before my brother Maartensz and myself. We thought it desirable to refer it to a Bench of three Judges regarding the question raised by it concerning the registration of certain deeds. It was next argued before a Bench which consisted of my brothers Garvin, Lyall Grant, and myself, as my brother Maartensz was not available at the time. At the close of the argument we felt that it would assist us if we had evidence as to the system upon which instruments were actually registered under the provisions of the Ordinance. The Registrar-General of Lands kindly sent Mr. de Silva, an officer of his Department, who gave evidence before us in the presence of the Counsel who appeared for the parties. After this evidence had been taken my brothers Garvin and Lyall Grant desired to hear Counsel once again. The appeal was accordingly listed and fully argued before this Bench. This time my brother Garvin was not available. The argument was not confined to the abstract question of law, but embraced the facts upon which that question had been decided in the lower Court. The evidence given by Mr. de Silva has been of much assistance. I have had the record of his evidence corrected and signed by him. It is filed in the Registry in connection with this appeal.

I shall first discuss the question of law, which is, whether the defendant's deed D 1 is entitled to priority over the plaintiff's deed P2 by reason of its having been "duly registered" within the meaning of section 17 of the Land Registration Ordinance, 1891.² The defendant's title is based upon D1 alone. It was registered in 1923. In date it is subsequent in regard to its execution but prior in regard to its registration to the plaintiff's deed P2. The plaintiff's title is based upon a chain of deeds, all of which are registered in connected folios, the earliest of them having been registered in 1909. The precise question for decision is whether the folio in which the defendant's deed D1 is registered is the "right folio."

The identity of the land described in the competing deeds was admitted. In both, the land is called by the same name, Edandekumbura, is described by boundaries recognizable as being the same, and as being situated in the "Gangapahala korale of the Udapalata in the District of Kandy." The only material difference is that in D1 it is stated to be situated in the village Ratmalkaduwa

¹ 20 N. L. R. 301.

² No. 14 of 1891.

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and in P2 in Hapugaspitiya. It is this difference in the description which has resulted in the plaintiff's deeds being registered in a set of folios different to the folio in which defendant's deed is registered.

It was admitted at the trial that the villages are "two separate villages included in the wasama of the Ratmalkaduwa Arachchi." Their being within the territorial jurisdiction of the same Arachchi or that he is called the Arachchi of Ratmalkaduwa is of no significance, because ordinarily an Arachchi exercises jurisdiction over a group of villages or hamlets.

The question for decision eventually resolves itself into this: Should the defendant's deed D1 have been registered in one of the folios connected with the registrations of the plaintiff's deeds although the name of the village is wrongly stated in the plaintiff's deeds. Before the law can be applied it will have to be ascertained in what village the land is actually situated—that question of fact will have to be tried, when the case goes back to the lower Court for trial, as the District Judge has not tried that question

The precise question of law to be decided on this appeal has not been considered in any of the decisions cited on the several occasions on which the appeal was argued. The cases cited were the following: *Silva v. Appu*,¹ *Marikku v. Fernando*,² *Fernando v. Pedru Pulle*,³ *Senaratne v. Pieris*,⁴ *Rajapakse v. Fernando*,⁵ and *Singho v. Wijesinghe*.⁶ The four first named cases might be regarded as forming one group. With reference to the provision in section 24 of the Ordinance they laid down the law to be that when once an instrument dealing with the land has been registered, all other instruments dealing with that land must, in order to satisfy the requirements of section 24, be entered in the same or a connected folio. They held that the folio in which the first registration was effected was the "right" and any other the "wrong" folio for the registration of instruments dealing with or effecting the land. It will appear that the registration in different folios in all those cases was attributable either to the fact that the deeds relating to more than one land were first registered, and thereafter a deed relating to the same lands when consolidated, or to the fact that a deed relating to an entire land was first registered and deeds relating to portions of it were subsequently registered. It was held that the same principle applied, although the one case in which the lands were consolidated is the converse of the other in which the land was "partitioned" (section 27) or divided, as it was held the word should be regarded as meaning.

The element of a misdescription of the land did not enter into any of those cases. But the remaining two cases, the fifth and sixth,

¹ (1914) 4 Bal. N. C. 28.

² (1914) 17 N. L. R. 481.

³ (1916) 2 C. W. R. 75.

⁴ (1917) 4. C. W., R. 65.

⁵ (1917) 20 N. L. R. 301 ;

(1920) 21 N. L. R. 495.

⁶ (1920) 22 N. L. R. 146.

are concerned with a misdescription of the land. Into the same group with these two cases would fall the cases of *Mohamad Sali v. Isa Natchia*¹ and *Paaris et al v. Perera*,² which, although they were not explicitly cited before us, are mentioned in the cases which were cited. In *Mohamad Sali v. Isa Natchia* (*supra*), the earliest case in this group, Wood Renton and Grenier JJ. held in 1911 that the registration of a deed in a different folio to that in which it would have been registered if the correct name, extent, and boundaries were given was a registration in "a wrong folio" and did not confer the benefit of priority created by the Ordinance. In *Paaris et al v. Perera* (*supra*) Lascelles C.J. and Grenier J. held to the same effect in 1912—the misdescription in this instance being confined to the boundaries alone. Both cases turned upon the interpretation placed on the words "so registered" in section 17. In neither was the provision in section 24 considered. In *Rajapakse v. Fernando* (*supra*) it was the judgment of the Privy Council which was cited to us. As to what precisely was the holding in that case upon the question of registration there was much argument. It was contended for the plaintiff that the effect of the holding in that case was that if a deed relating to a land describing it as situated in a different village to that in which it is actually situated be registered the folio in which that deed is registered must be deemed to be the right folio and all subsequent registrations of deeds connected with the same land must be connected with that folio. If this contention is right we are concluded by the authority of that case and must hold that the plaintiff's deed cannot be regarded as void as against the defendant's deed, although the land is actually situated in Ratmalkaduwa and not in Hapugaspitiya. To ascertain the soundness of this argument it is necessary to refer to the facts of the case which are to be found in the judgment of Ennis J. in the report of the case at page 301 of Volume XX of the New Law Reports. In 1897 Carry purchased a land called Medagodamukalana from the Crown and added to it twenty other allotments of land which he purchased from the villagers from time to time. He described Medagodamukalana and those allotments as "adjoining each other and forming one property" (section 23) called Medagoda estate, and the deed of sale of this estate in 1909 by Carry was registered with appropriate cross references to previous registrations. It is stated that the extract of encumbrances which was an exhibit in the case gave a very full description of the property registered and that had the register been searched at the time of the subsequent registration of deeds the fact that a deed relating to the lands had actually been registered would have been discovered. In 1912 Carry purchased from the Crown the same allotments which he had previously purchased from the villagers. The grant from

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the Crown was registered in 1914 in a different folio to that in which the deed for Medagoda estate was registered. The lands were described in that grant as Ihalamedagoda estate, and as being in the village Ihalamedagoda, whereas the description of those very lands together with the mukalana in the deed of earlier date was Medagoda estate situated in Medagoda. It was held by the Privy Council that the Crown grant of 1912 was not rightly registered. It was argued before us that their Lordships of the Privy Council had stated in their judgment that a misdescription as regards the village in which a land was situated did not matter. Although there is much to be said for this view I am unable to accept it. That is not the conclusion I come to upon a careful consideration of the whole of their Lordship's judgment. Immediately after referring to the facts the holding is stated that the Crown grant should have been registered in the same folio as the older deed and there follows the reason which I regard as the only one on which that holding is based, that under section 24 of the Ordinance the "later registration must state the volume and folio of the register in which such property has been previously registered. In the present case Thomas Carry, who held the Government grant and must have been party to the registration, was fully aware of the earlier conveyance, and the infringement of the regulation in section 24 must have been intentional on his part. Their Lordships are not prepared to hold that the registration of the Crown grant was under these circumstances valid or that it had any effect at law." It should be noted here that Carry's interests under the Crown grant were sold against him only in 1916, whereas the registering of the grant was effected in 1914. Having disposed of the question regarding registration in those words, their Lordships next proceed to dispose of another question of law, and at the close of their judgment referring to an argument addressed to them, say : "A great part of the argument on behalf of the appellant was based on the fact that in the register of the sale of the land by Government to Thomas Carry it is spoken of as the Ihalamedagoda estate, and in the registration of the deeds relating to the title of the appellant it is registered as being in the village of Ihalamedagoda, whereas in the deeds relating to the respondent's title it is spoken of as being in the village of Medagoda. But the provisions of section 24 of the Ordinance turn on the identity of the lands, and not upon the identity of the nomenclature by which they are described, and their Lordships have no doubt that the change in name did not connote any change in identity, and was not understood so to do by any one concerned" (page 497). It appears to me that when their Lordships speak of the "identity of the nomenclature" they refer to the name of the estate and not to the name of the village, for in the same connection they speak of the "change in name," an expression which appears inappropriate

if the latter words were intended to refer to the misdescription as regards the name of the village, for the villages did not change their name, but it was the name of the estate only which was changed. They say that it is on the identity of a land that the provisions of section 24 turn. Now, how is the identity of a land ascertained but by reference to several particulars, such as the name, extent, boundaries, and situation of the land. Of these particulars the name and the extent are undoubtedly of less value than the boundaries and situation, which are of material importance. From the reports of the cases to be found in the New Law Reports it does not appear that there was any evidence where in fact the lands conveyed by the Crown grant of 1912 were situated. Their Lordships did not consider that question of fact nor whether the respondent's deed, which was of earlier date, should have been registered in some folio other than that in which it was registered, but they decided the competition between the deeds by refusing to recognize the registration of the appellant's deed of later date, for which priority was claimed, because the person responsible for its registration had infringed a regulation by intentionally omitting to furnish the particulars of the prior registration of which he had knowledge. If those particulars had been furnished it is probable that in the registration of the Crown grant there would have been a cross reference to the registration of the earlier deed and a cross reference entered in the registration of that deed to the registration of the Crown grant. Such cross references would have enabled any one searching the registers to ascertain all the registrations which had taken place in the same manner as if those registrations had been entered in the folio in which the first deed was registered or in folios which are continuations of it.

In *Singho v. Wijesinghe* (*supra*) de Sampayo J. interpreted the judgment of the Privy Council in *Rajapakse v. Fernando* (*supra*) as an authority for the proposition that identity of the names given to a land in its description is not an essential detail.

I therefore hold against the plaintiff's contention that the question raised by this appeal is concluded by the decision of *Rajapakse v. Fernando* (*supra*) by the Privy Council. That being so, it would become apparent that the law laid down in *Mohamad Sali v. Isu Natchia* (*supra*) and *Paaris et al v. Perera* (*supra*) already referred to is not in conflict with the decision of *Rajapakse v. Fernando* (*supra*). If the law laid down in those two cases is good law—that a registration with the wrong description of the boundaries of a land is not a description which complied with the requirement of the Ordinance so as to confer priority, by a parity of reasoning a misdescription as regards the village will also likewise vitiate a registration. If I may say so with all respect I am in entire accord with those decisions. The

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contention for the plaintiff was that in the present case both villages were within the same defined division of the district of Kandy for which the book designated by the letter D has been assigned by the Registrar and that deeds registered anywhere in D are rightly registered. From the document D2 it appears that the Registrar of Lands regards Gangapahala korale as the name of the pattu and Udapalata as the name of the korale. According to Mr. de Silva's evidence the division allotted to each book is not a village but a korale or pattu. Hence, whether it was the korale called Udapalata or the pattu called Gangapahala to which was assigned the book D, instruments connected with the dealings of any land in Gangapahala korale will be registered in that book. We accordingly find that both the competing deeds have in fact been registered in that book. The plaintiff submits that registration in any part of that book satisfies the requirements of the Ordinance. That contention, I think, is not sound. The registration must be not only in the "book" but on the appointed page of the book (section 18).

Section 15 requires the Registrar to keep "such books as shall be required by the Rules and Regulations." The words "Rules and Regulations" occur in the earlier section 8, and convey the suggestion that the books referred to in section 15 are the same as the books referred to in the earlier section. There is evidence that the Governor has made no rules under section 8. But nothing turns upon that fact. The evidence proves that there are carefully drawn up rules made by Government prescribing the manner in which the registration of deeds is to be effected. Those rules are given *in extenso* in Jayewardene's "The Law of the Registration of Deeds" in the chapter headed "The Formalities of Registration". Section 15 further requires the Registrar to allot "to each book a defined division of the Province or district, so that every deed relating to land situated therein (*i.e.*, the division) may be registered therein in such manner as to facilitate reference to all existing alienations or encumbrances affecting the same lands". Those words clearly indicate that it is not merely the registration in the particular book which is required but that the registration should be made in a manner so as to facilitate reference to existing registration. "The object of registration is the protection of *bona fide* purchasers—it enables them by search to discover previous dealings with the property," and Hogg (Deeds of Registration) enunciates the consequent rule as follows: "The rule that a person searching the register has notice of what is on the register—in Lord Redesdale's words in *Bushell v. Bushell* 'if he searches he has notice,' seems to supply the right principle on which to rest the further rule, that a person who ought to search the register must be taken as having notice of what he would find there if he did search. Facts and circumstances

that might thus be discovered will then be the subject of constructive notice, and constructive notice, quite as much as actual notice, may afford evidence of fraud or want of *bona fides*." (Ennis J. in *Rajapakse v. Fernando (supra)*).

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Section 16 enacts what instruments must be registered, and that they shall be registered "in the books mentioned in the preceding section." Section 17 enacts that unless those instruments are "so registered" they are to be deemed void as regards titles by virtue of instruments "which shall have been duly registered as aforesaid." Are these latter words and the words "so registered" to be interpreted only by the light of the provisions to be found in sections 15 and 16? I think not. They must be interpreted in the light of the provisions to be found in the Ordinance as a whole. Sections 18, 19, 20, 21, 22, 23, 24, and 27 contain provisions which have a bearing, but for the purpose now under consideration I will refer only to some of those sections. Section 18 provides that the party concerned is to produce the instrument to the Registrar and upon payment of the stamp duty the Registrar is forthwith to register the instrument "on the appointed page of the book assigned for the division, village, or district wherein the land thereby affected is situated." The context makes it clear that all the words following "Book" refer to book and not to "the appointed page." The section therefore requires the registration to be not only in the "Book" but on "the appointed page" of the book. What is the "appointed page" according to the system followed under the rules by which the provisions of the Ordinance are being actually carried into practice is made clear by the evidence given by Mr. de Silva? He says that the "Book" assigned to a division might consist of one or several volumes, and a volume might consist of one "folio" or of several folios numbered consecutively not exceeding 400. He described a folio as being the whole side of a printed sheet of paper bearing at its top the letter assigned to the division and the number of the volume. These printed sheets are those with which we are familiar from the extract from the registers which are furnished to the public upon an application made to Registrars of Lands for extracts. They give all the particulars regarding the deed which is registered and all the particulars contained in the deed regarding the land. A folio, Mr. de Silva says, is assigned to each land which is registered. Thus the "appointed page" in section 18 means the folio assigned to each land at the time when a deed dealing with the land is the first to be registered. The procedure is for all deeds dealing with that land to be registered in that folio or in folios to which the registration is "carried over", the reference to such subsequent registration being facilitated by cross references.

Section 23 enacts that every instrument produced for registration shall contain "an accurate description of the property, its boundaries,

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extent, and situation with respect to the village, pattu, korale, or other division of the district." It should be noted that the name of the land is not mentioned as among the requirements of an accurate description. The Notaries Ordinance (No. 1 of 1907) in section 29 (15) (a) requires of notaries that they shall state in deeds the same particulars as those mentioned in section 23, but it is added "and also the name and assessment number, if any." The care with which the rules for the working of the Ordinance have been framed is shown in the fact that rule 6 (Jayewardene, page 42) requires identically the same particulars to be furnished as those mentioned in section 23 but adds that if the property is situated in a town the name of the street and assessment number, if any, should also be stated. The provision in section 23 prescribing the form of the endorsement to certify to a registration shows that the registration must be with reference, not only to the division of the district, but also to the volume of the divisional register and the folio of the volume. I therefore conclude that for registration to be effective it must be entered, not only in the proper book, but also in the appointed folio. The effectual working of this requirement is provided for by a number of well conceived rules quoted *in extenso* by Jayewardene (page 50-59) containing provisions in great detail for the keeping of indexes called local and personal, to facilitate reference to all existing registrations. Mr. de Silva describes what is done when a deed is produced for registration which does not "state the volume and folio of the register" in which the "property has been previously registered," as required by section 24. Mr. de Silva says that the Registrar will consult the local index and try to discover whether any deeds affecting a land answering to the description given in the deed produced and situated in the village mentioned in the deed has been registered previously. If he does not find a registration under the village he will conclude that no deed has been registered previously and act accordingly. His evidence is that the correct name of the village must be given in order to ascertain what deeds, if any, relating to the same land have been registered previously. Now, a person having no knowledge of his own regarding deeds dealing with a land which have been registered must depend on the result of a search of the registers to fulfil the requirements in section 24 that the deed produced shall state the particulars of the previous registrations. Mr. de Silva's evidence shows that unless the deeds previously registered had given the name of the village in which the land is situated correctly the search would be useless. I therefore hold that if the land in dispute in the present action is situated in the village Ratmalkaduwa, and that village at the date of the registration of the deed P2 was not called Hapugaspitiya, the plaintiff's deed has not been duly registered and the defendant's deed D1 has been so registered and should be given priority. Although no

cadastral survey of the whole land has been made, we do know that the Surveyor-General has issued survey plans showing the divisions of the whole Island into Provinces, districts, korales, pattus, and villages for the purposes of revenue and administration, and there is no difficulty in locating any village with reference to a pattu and korale.

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The parties were content to have the question of registration decided upon the documentary evidence produced and the admissions made at the trial, but as the case must be remitted for the trial of other issues, whatever be the decision in regard to the question of registration, I will formally set aside the order of the District Court giving judgment for the plaintiff and remit the case with liberty to the parties to call evidence, if they so desire, as to the actual situation of the land or any other facts necessary to apply the principle indicated in this judgment as to which deed is to be regarded as having been duly registered. In all the circumstances the costs of the appeal should be costs in the cause.

LYALL GRANT J.—

The question to be decided in this case is whether the registration of a certain land was in the right folio.

The registration in question followed on a Fiscal's conveyance and was registered in a folio which contained no previous registration of the land. In this register the land is described as situated in a village called Ratmalkaduwa. It was admitted, however, that the land was previously registered in another folio and described as situated in Hapugaspiya.

It is well-established law that there is a duty on the purchaser to state the volume and folio of the register in which the property purchased had been previously registered. See section 24 of the Land Registration Ordinance, No. 14 of 1891.

Emphasis has been laid, in various cases of this Court and in the Privy Council case of *Rajapakse v. Fernando*,¹ on the necessity of carrying out the provisions of section 24.

Evidence was led on behalf of the Registrar of Lands as to the system of registration. It appears that each korale or pattu is a separate registration division, and that for each such division one book is kept, which is denominated by a letter of the alphabet. Each particular land has a blank sheet opened for it, which is called a folio, and all entries in regard to that land are made in that folio till filled up, and thereafter there is a cross reference to another folio.

The term "volume" does not appear to be of importance, as a volume consists merely of a number of folios, taken in chronological, not geographical, order.

¹ (1917) 20 N. L. R. 301 ; 21 N. L. R. 495.

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The registration is entered on a sheet which contains, in addition to the name of the division, the name of the village and other subdivisions in which the land is situated, and each village has a separate index which gives the names of all the registered lands in the village, their extent, the proprietor's name, and the volume and folio in which the land is registered.

In the present case it seems important to know whether the villages of Ratmalkaduwa and Hapugaspiya have separate indexes, and also whether these villages are contiguous and whether the boundaries have at any time been so altered as to remove the lands in question from one village to the other.

I do not think that, if a land is entered in the folio as being in a village in which it is not in fact situated, such a registration complies with the terms of the Ordinance. There is in that case no accurate description, as required by section 23, of the boundaries and situation of the property.

In fact, strictly speaking such a registration can hardly be said to be a registration of the property at all. It is a registration of some piece of land which is stated to lie in the village of A, and such a registration cannot possibly, to my mind, be held to apply to a piece of land which actually lies within the village of B, assuming those villages to be quite separate and distinct.

In the present case no evidence has been led in regard to the issue which was raised, whether the land was correctly described as being in Hapugaspiya or Ratmalkaduwa, and we do not know which, if any, of the deeds were correctly registered.

It seems to me essential that we should have evidence, not only on this point, but also on the nature of the indexes kept in regard to these two villages, *i.e.*, whether separate indexes of these two villages have been kept and whether these indexes have always referred to the same extent of land; in short, evidence to show whether the land was or was not correctly registered in Hapugaspiya.

MAARTENSZ A.J.—

The land which is the subject of this action, called Edandekumbura, belonging to one Ganitha, who by deed No. 16,119 (P1) sold it to his sister Rane. Ganitha re-acquired the land by inheritance, on Rane's death without issue, and sold an undivided half share to Charles Silva by deed No. 111 dated July 20, 1923 (P2), who in turn sold it to plaintiff by deed No. 156 dated March 17, 1924 (P3).

Deeds P1, P2, and P3 were registered on November 19, 1909, July 21, 1923, and March 18, 1924, respectively, in Division D, Volume 57, folios 257 and 258. The land is described in these deeds as situated in the village of Hapugaspiya in Gangapahala korale of Udapalata in the District of Kandy.

The first defendant appellant bought the land at a sale in execution of a writ issued by the Village Tribunal of Udapalata and obtained Fiscal's transfer No. 20,223 dated January 18, 1923 (D1).

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The Fiscal's transfer describes the land as situated in the village of Ratmalkaduwa in Gangapahala korale of Udapalata in the District of Kandy. It was registered in Division D, Volume 91, folio 74.

There is no definite finding on the point, but I shall assume for the purpose of discussing and deciding the question raised by the appeal that the land is situated in the village of Ratmalkaduwa.

P1 is the first deed registered relating to Edandekumbura, and the question raised by this appeal is whether the misdescription with regard to the village in that deed deprives it and the other deeds in plaintiff's chain of title of the right of priority over first defendant's Fiscal's transfer as not being registered in the right folio.

The folio in which the first deed was registered was held to be the right folio in the case of *Silva v. Appu*,¹ where De Sampayo J. said:—

“ The words ‘ right ’ and ‘ wrong ’ are relative terms and have reference to a folio already determined. In my opinion the folio so determined is the folio which the Registrar opened for registering deeds relating to the particular land and in which the first of such deeds is registered. Accordingly I hold that, for the purposes of this question, it is to the folio in which K's deed of January 4, 1899, is registered that reference should be made.”

The principle laid down in *Silva v. Appu* (*supra*) was followed in *Marikku v. Fernando*² and *Fernando v. Pedru Pulla*.³

In the latter case Wood Renton J. said:—

“ This mortgage was registered in folio C 18/105. It was, so far as appears from the material at our disposal, the first dealing with the land, and therefore (see *Silva v. Appu*) the folio in which it was so registered was the right folio for the registration of subsequent dealings with the land within the purview of section 24 of the Land Registration Ordinance, 1891.”

The effect of section 24 of the Land Registration Ordinance, 1891, was laid down more emphatically by the same Judge in *Senaratne v. Pieris*.⁴ He said:—

“ The present case comes directly within the *ratio decidendi* in *Marikku v. Fernando* (*supra*), viz., that when a property has once been registered, all subsequent dealings with it must, in order to satisfy the requirements of section 24

¹ (1914) 4 Bal. N. C. 28.

² (1914) 17 N. L. R. 481.

³ (1916) 2 C. W. R. 75.

⁴ (1917) 4 C. W. R. 65.

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of the Land Registration Ordinance, 1891, be entered in the same folio as that of the original registration. This rule is equally applicable whether two lands separately registered are subsequently consolidated or the subsequent dealing consists in the acquisition of a separate title to a land already owned, as part of another land, on unregistered deeds."

In none of these cases was the effect of misdescription in the first deed registered considered. If full effect is given to the construction placed on section 24 of the Ordinance no question of misdescription can arise. All subsequent deeds must state the volume and folio in which the first deed has been registered, whether the property has been properly described in the first deed or not.

The principle laid down in *Silva v. Appu* (*supra*) and the construction placed on section 24 of the Ordinance was adopted by their Lordships of the Privy Council in the case of *Rajapakse v. Fernando*.¹ In that case a question as to the situation of the land was raised at the argument before the Privy Council, which I shall refer to later.

The appellant contended that the principle laid down in *Silva v. Appu* (*supra*) only applied to the folio in which a deed containing an accurate description of the land was first registered, and therefore did not apply to the folios in which P1 was registered. We were also invited to reconsider the construction placed on section 24 of the Ordinance. The decision of the Privy Council, it was contended, turned on the particular facts of that case.

A corollary to the question raised by the appeal is whether an accurate description of the village is essential to the registration of a deed under the present system of registration. The consideration of this question involves an examination of certain sections of the Ordinance and the evidence given by Mr. de Silva, Chief Clerk of the Correspondence Branch of the Registrar-General's Office, before this Court.

According to Mr. de Silva's evidence no rules have been made under section 8 as to the manner in which the books rendered necessary are to be kept, and the cadastral survey contemplated by section 9 of the Ordinance has not been made of the villages and districts of the Central Province.

The system of registration observed is as follows:—The defined division of the Province allotted to each book kept under section 15 of the Ordinance is a korale or pattu, each book being given a distinguishing letter of the alphabet. To facilitate reference to existing alienations and encumbrances an index is kept; in this index a corresponding entry is made of every deed registered under the name of the village in which the land is situated. When a deed is tendered for registration the index is examined to ascertain

¹ (1917) 21 N. L. R. 495.

whether the land described in the deed has been previously alienated or encumbered. If the index shows that the land has been previously registered the deed is registered in the same folio, or, if there is no room, in another folio with a cross reference. If no deed has been previously registered the deed is registered in another folio.

The index is the key to the volumes in which the deeds are registered, and a misdescription in a deed with regard to the village in which a land is situated renders reference to the index inefficual. For if a land called Edandekumbura situated in Ratmalkaduwa is described as situated in Hapugaspitiya it will be entered in the index in the list of lands in the latter village, and a subsequent deed in which the land is properly described as situated in Ratmalkaduwa will be registered in another folio (which appears to be exactly what has happened in this case), because there will be no entry in the index of the registration of a deed regarding Edandekumbura under the head "Ratmalkaduwa"; even if the name Edandekumbura is noticed in the list of lands under the head "Hapugaspitiya" it will be presumed that it is a different land.

Accuracy of description is therefore essential and is required by the Ordinance. Section 23 enacts that every deed tendered for registration shall contain embodied therein or in a schedule annexed thereto an accurate description of the property which is affected thereby, its boundaries, extent, and situation with respect to the village, pattu, or korale or other division of the district; and section 18 enacts, with reference to a deed tendered for registration, that the Registrar shall forthwith register the same on the appointed page of the book assigned to the division, village, or district wherein the land thereby affected is situated.

I am therefore of opinion that the rule laid down in *Silva v. Appu (supra)* is subject to the qualification contended for by the appellant, and that section 24 of the Ordinance only applies to the volume and folio in which a deed containing an accurate description of the land has been previously registered.

There remains the question whether we are bound by the decision of the Privy Council in the case of *Rajapakse v. Fernando (supra)*, in which the facts, shortly stated, are as follows:—Thomas Carry, when he had no title, sold the land in dispute to defendant's predecessor in title by a deed which was registered in 1909 in Division F, Volume 81, folio 36. Carry obtained title in 1912 by a grant from the Crown, and the property was sold in execution against him and purchased in 1916 by plaintiff's predecessor in title.

The plaintiff appealed to the Privy Council from the judgment entered against him in Ceylon, Their Lordships dismissed the appeal and said with regard to section 24 "In any case, under

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section 24 of the Land Registration Ordinance, 1891, the latter registration must state the volume and folio of the register in which such property has been previously registered. The language of the section makes this imperative, and it is obvious that observance of this provision is vital to the effectiveness of a system of registration." Up to this point in the judgment there is no indication that the rule laid down applied whether the land had been correctly described in the first registered deed or not.

The question of description was considered later. It arose thus: Carry, in the deed of 1909, described the land as Medagoda estate in Medagoda village. In the grant to him from the Crown it is described as Ihalamedagoda estate in the village of Ihalamedagoda. Their Lordships, dealing with the argument based on this difference of description, held that "the provisions of section 24 of the Ordinance turn on the identity of the lands, and not upon the identity of the nomenclature by which they are described" and added that they had no doubt that the change in name did not connote any change in identity and was not understood so to do by anyone concerned.

The respondent contended that the effect of this holding was to render a compliance with the provision of section 24 essential where a deed has been registered whether the situation of the land was correctly described in the deed or not. I am unable to accept the contention, for it appears to me that their Lordship's opinion referred to the difference in the name of the land and not to the difference in the description with regard to the village.

I accordingly hold that the decision of the Privy Council in the case of *Rajapakse v. Fernando (supra)* is not an authority for the proposition put forward by the respondent.

I agree to the order proposed by my brother Schneider.

Set aside; case remitted.

