[FULL BENCH.]

1912.

Present : Lascelles C.J. and Middleton, Wood Renton, and Grenier JJ.

KANAPATHIPILLAI *v.* MOHAMADUTAMBY LEVAI *et al.*

139—D. C. Batticaloa, 3,388.

Registration—Priority—Registration Ordinance of 1891, s. 17.

P, by deed of December 26, 1899, registered on November 28, 1910, donated the land in dispute to S, who, by deed of December 7, 1910, registered on December 15, 1910, sold it to plaintiff. In the meantime, by deed of November 14, 1906, P conveyed the same land to K, who re-conveyed the property to P on the same day. P thereafter, by deed of November 30, 1909, registered on December 20, 1909, conveyed the land to the defendants.

***Held*, that defendants'** title was superior to that of the plaintiff.

THE facts are fully stated in the judgment of Wood Renton J. The case was first argued before Wood Renton J. and Grenier J., who reserved it for a Full Bench.

Tisseverasinghe, for the appellants.—The deed of Paremecutty Sastry in favour of Sinnepillai, though dated December, 1899, was registered only in 1910. Plaintiff claims title through Sinnepillai. The deed in favour of the appellants was executed and registered in 1909. The appellants' title is clearly superior. See *Kirihamy v. Kiribanda*,[1] *Aserappa v. Weeratunga et al.*,[2] *Silva v. Sarah Hamy*,[3] C. R. Galle, 151,[4] *Canavadipillai v. Velupillai*,[5] *Hamidu v. Natchia*.[6]

The judgment in *Kanapathipillai v. Kannachi*,[7] on which the learned District Judge relies, has been explained in *Kirihamy v. Kiribanda*[1] and in *Aserappa v. Weeratunga et al.*[2]

Sinnepillai got by her deed a title that was defeasible by prior registration of a subsequent deed from Paremecutty Sastry.

H. A. Jayewardene (with him *J. W. de Silva* and *Cooray*), for the respondent.—When Paremecutty Sastry conveyed to defendants he had no title to convey, as he had previously donated the land to Sinnepillai. The defendants, therefore, gained nothing by the conveyance in their favour. Registration cannot create title where there was none.

[1] *(1911) 14 N. L. R. 284.*
[2] *(1911) 14 N. L. R. 417.*
[3] *(1883) Wendt 383.*
[4] *(1873) 2 Grenier 6.*
[5] *(1887) 8 S. C. C. 111.*
[6] *(1892) 2 C. L. R. 32.*
[7] *(1910) 13 N. L. R. 166.*

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Paremecutty Sastry transferred the land to one Kadaramatamby in 1906. On the same day he got a re-transfer from Kadaramatamby. Paremecutty Sastry thereby extinguished his original title, and by the deed of re-transfer he started a new title, beginning from Kadaramatamby. It is this title that was conveyed to appellants. The contest then is between the title derived from Kadaramatamby by the appellants, and the title acquired by the respondents from Paremecutty Sastry through Sinnepillai. Priority by registration could not be gained by appellants under the circumstances, as the competition is not between two titles from the same source.

The deeds in favour of Kadaramatamby and Kadaramatamby's deed in favour of Sastry were not registered.

The following cases were cited: *Silva v. Gomes*,[1] *Kadravelu v. Perera*,[2] and *Peris v. Perera*.[3]

Cur. adv. vult.

March 14, 1912. LASCELLES C.J.—

This appeal has been referred to a Full Bench for decision.

The land which is the subject-matter of this action belonged to one Paremecutty Sastry, who, by deed P 2 dated December 26, 1899, and registered on November 28, 1910, donated the land to one Sinnepillai, who, by deed P 1 dated December 7, 1910, and registered on the 15th of the same month, sold it to the plaintiff. Meanwhile, Sastry, by a deed of December 1, 1905, purported to revoke the donation in favour of Sinnepillai, but it is conceded that that deed was inoperative for that purpose.

Sastry, by deed P 3 dated November 14, 1906, conveyed the land to Kadaramatamby, who, by deed P 4, also dated November 14, 1906, re-conveyed the property to Sastry, who, by deed D 1 dated November 30, 1909, and registered on December 20 of that year, conveyed to the second and third defendants, who are the present appellants.

The question referred to us is that formulated by the first issue in the following terms:—

> " (1) Whether deed No. 730 of November 30, 1909, in favour of second and third defendants has priority over deed No. 2,103 of December 26, 1899, in favour of Sinnepillai by reason of registration."

In view of the terms of section 17 of " The Land Registration Ordinance, 1891," and the numerous decisions of this Court thereon, I confess that the point reserved for consideration does not present any particular difficulty to me.

The competing deeds, as stated in the first issue, are on the one side the appellants' deed D 1 dated November 30, 1909, and registered on December 20, 1909, and on the other side the donation

[1] *(1909) 1 Cur. L. R. 96.* [2] *(1889) 9 S. C. C. 36.*
[3] *(1906) 10 N. L. R. 38.*

P 2 to Sinnepillai dated December 26, 1899, and registered on November 28, 1910. Of these, the former deed, though later in date, is prior in registration; it is a deed for valuable consideration, and there is no question of fraud or collusion. It follows, therefore, that the competing deed P 2 must be deemed void as against the appellants, who claim an adverse interest under the deed D 1. Mr. Hector Jayewardene, who argued the case for the respondent with much ingenuity, advanced an argument which is frequently put forward with some appearance of plausibility in cases of this description. Sastry, he contended, when he conveyed to the defendants, had previously divested himself of title by his donation to Sinnepillai, so that nothing passed by his conveyance to the defendants.

The Registration Ordinance, it was urged, was not intended to, and does not, convert into valid conveyances instruments which are *per se* inoperative. But this is precisely what the Ordinance does in the majority of cases where the competition is between two deeds derived from the same source of title. The prior unregistered deed is deemed void as against the parties claiming an adverse interest under a subsequent registered deed for valuable consideration. The natural and inevitable consequence of this process is that instruments which would otherwise have been inoperative to pass title are clothed with validity. The principle can hardly be better put than by Mr. Justice Clarence in *Silva v. Sarah Hamy*[1]:—

> "When an owner of land conveys it to A for value, and subsequently executes another conveyance of the same land in favour of B, also for value, it is true at the date of the second conveyance the owner has nothing left in him to convey, but by the operation of the Ordinance B's conveyance over-rides A's if registered before it. Unless the Ordinance has this effect it has none at all, and this seems the actual construction of the enactment."

This point is also clearly dealt with by Creasy C.J. as far back as 1873, in C. R. Galle, 151.[2]

Mr. Jayewardene also contended that the true competition was not between the deeds D 1 and P 2, but between the conveyance to Kadaramatamby and the latter deed. With regard to this contention, it is to be observed, in the first place, that it is outside the issue on which the parties went to trial, which was as regards the relative priority of deeds D 1 and P 2. But the contention, in my opinion, is not sound. The adverse interest which the appellants claim is obviously in virtue of their own deed D 1, and they are entitled by the terms of section 17 to have the benefit of the prior registration of the deed. The non-registration of the conveyance by Sastry to Kadaramatamby is not material for in *Peris v. Perera*[3] it was held

[1] *(1883) Wendt 383, 384.*

[2] *(1873) 2 Grenier 6.*

[3] *(1906) 10 N. L. R. 33.*

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that where a deed under which a person claimed title is registered it is immaterial that earlier deeds forming links in the title have not been registered. Then it was urged that the appellants must be taken to have derived their title, not from Sastry, but from Kadaramatamby, so that the competition is not between two deeds derived from the same source. This view is, in my opinion, quite fallacious. Kadaramatamby had no title save that which he derived from Sastry. It is true Sastry's deed to Kadaramatamby at the time did not pass title; it was ineffective until the registration of the appellants' deed placed them in a position of priority over the claimants under the donation to Sinnepillai. The case of *Kanapathipillai v. Kannachi*[1] was relied on by the learned District Judge as an authority for his ruling that the prior registration of the defendants' deeds did not give them priority of title. But this case really turned upon the question of notice, and on that point it must be read in connection with the subsequent judgment of this Court in *Aserappa v. Weeratunga et al.*[2]

In my opinion the appeal should be allowed, and the action dismissed with costs here and in the Court below.

MIDDLETON J.—

In my opinion the point in this case is covered by authority, and I do not think it necessary to add anything to the judgment of my Lord, which I have had the privilege of perusing, and with which I entirely concur.

WOOD RENTON J.—

This case was argued before my brother Grenier and myself on October 9, 1911. At the close of the argument we sent it back to the District Court for further evidence, and any expression of opinion that the learned District Judge desired to offer on the original and further evidence as to whether or not the plaintiff-respondent had established title by prescription. The District Judge has recorded the further evidence placed before him by the parties, and has expressed his opinion that the plaintiff-respondent has not established title by prescription. The appeal was argued again on February 28, and now comes before the Full Court for final adjudication. The appellants' counsel is, of course, quite satisfied with the view taken by the District Judge on the issue as to prescription. The respondent's counsel did not challenge it, and I see no reason to think that it is wrong.

The case, as presented by Mr. Cooray to my brother Grenier and myself at the recent argument, had to be decided on the following simple facts. The action is one brought by the respondent against the appellants and others for a partition of a land called Kalladykandam. Of this land the respondent claims an undivided three acres under the following title. These three acres originally belonged

[1] (1910) 13 *N. L. R.* 166. [2] (1911) 14 *N. L. R.* 417.

to Paremecutty Sastry. By donation deed (P 2) dated December 26, 1899, and registered on November 28, 1910, by the respondent, Paremecutty Sastry donated the acres in question to a woman, Sinnepillai, who sold them to the respondent by deed (P 1) dated December 7, and registered on December 15, 1910. Paremecutty Sastry had purported to revoke the donation in favour of Sinnepillai by deed No. 184 dated December 1, 1905. It was held, however, by the District Judge—and his finding on this point has not been contested—on the authority of the case of *Kanapathipillai v. Kannachi*,[1] that that deed of revocation, not having been effected through the Court, was void. Paremecutty Sastry, however, subsequently to the date of revocation, namely, by deed (D 1) dated November 30, and registered on December 20, 1909, sold the three acres in dispute to the second and third defendants-appellants. At the date of that sale he had divested himself of his title to the property in question. But the appellants' deed is prior in the date of its registration to both the donation deed in favour of Sinnepillai and her transfer deed in favour of the respondent. The question that we had to decide was whether, in spite of the fact that, at the date of his deed of transfer to the appellants, Paremecutty Sastry had no title to the property disposed of by that deed, it acquired priority by virtue of its prior registration over the deed of donation to Sinnepillai and her deed of transfer to the respondent. It appears to me that on the authorities we are bound to answer this question in the affirmative. We are not called upon here to inquire what the legal position would be if the subsequent purchaser had derived his title from a Fiscal's conveyance, which, in terms, passes only the right, title, and interest of the judgment-debtor. We are in presence of a conveyance purporting to pass a clean title to purchasers for value and without notice. The cases of C. R. Galle, 151,[2] *Silva v. Sarah Hamy*,[3] and the language of Dias J. and Clarence J. in *Canavadipillai v. Velupillai*,[4] a decision of the Full Bench as then constituted, seem to me to be binding authorities in favour of this view, and I think that they are sound in principle.

At the argument before the Full Court Mr. Hector Jayewardene raised, and argued with very great ability, a fresh point on the following additional evidence. After the revocation of the deed of donation Paremecutty Sastry transferred the land in suit to one Kadaramatamby by deed No. 467 dated November 14, 1906. On the same day he took a retransfer of the land by deed No. 468. In his transfer to the appellants he recited this deed of retransfer. Neither of these intermediate deeds was registered. Mr. Jayewardene argued that, by his transfer to Kadaramatamby, Paremecutty Sastry extinguished his original title; that by the deed of retransfer

[1] (1910) *13 N. L. R. 166.*
[2] (1873) *2 Grenier 6.*
[3] (1883) *Wendt 383, 384.*
[4] (1887) *8 S. C. C. 111.*

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he started a new title in himself, of which Kadaramatamby was the source; that this was the title which he conveyed to the appellants; that it was not adverse to the interest acquired by the respondent from Sinnepillai; and that consequently it could not acquire by registration priority over the respondent's deed from Sinnepillai.

It must be observed that in his deed in favour of the appellants Paremecutty Sastry does not convey solely on his deed from Kadaramatamby. He sets out his original title, and mentions the deed of retransfer merely as a link in that title. I am unable to accept the view that any break in the chain of title was effected by the intermediate unregistered deeds. Paremecutty Sastry conveyed no title to Kadaramatamby. Kadaramatamby reconveyed no title. The source of the appellants' title was Paremecutty Sastry himself. The intermediate deeds were mere links in the chain of title from him. That being so, by virtue of section 17 of Ordinance No. 14 of 1891 (and see *Peris v. Perera*[1]) the prior registration of the appellants' deed wiped out the intermediate unregistered deeds, and the title derived by the respondent from Sinnepillai on a deed of later registration, and clothed with legal force, as against the respondent, Paremecutty Sastry's deed in favour of the appellants, although at the date of the execution of that deed Paremecutty Sastry had no title to convey. Unless section 17 of Ordinance No. 14 of 1891 is interpreted in this way, I do not see how effect can be given to its language and intention at all.

I would set aside the decree under appeal, and direct that the plaintiff-respondent's action should be dismissed with all costs of the action and of the appeal.

GRENIER J.—

I agree with the rest of the Court, but I should like to add a few words in regard to my judgment in the case of *Kanapathipillai v. Kannachi*,[2] which the learned District Judge proposed to follow in deciding the present case. The question there that I discussed was as to the effect of notice, and I expressed my opinion that a person who has actual notice of the existence of an instrument cannot get priority over it through the medium of the Registration Ordinance. as the attempt to obtain such priority amounted to fraud under the proviso to section 17 of Ordinance No. 14 of 1891. In saying so I followed the judgment of the Privy Council in *Crowby v. Bergtheil* (see *Jayewardene's Law of Mortgage 84*). I expressed no decided opinion on the question of registration, nor did I hold anything definitely on the point, although I held in effect that the Commissioner was wrong in deciding the question of registration in the way he did on the materials before him.

Appeal allowed.

[1] *(1906) 10 N. L. R. 33.*

[2] *(1910) 13 N. L. R. 166.*