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*Present* : Dalton and Drieberg JJ.DYSON *v.* KADIRASAN CHETTY.198—D. C. (*Inty.*) *Kalutara*, 308.*Land acquisition—Title of claimant—Date of reference—Title perfected after reference to Court.*

In proceedings under the Land Acquisition Ordinance it is open to a claimant to perfect his title after the reference to Court.

**A** PPEAL from an order of the District Judge of Kalutara in a reference under the Land Acquisition Ordinance. The first and third defendants each claimed the amount of compensation under the circumstances set out in the judgment.

*Keuneman*, for appellant.

*H. V. Perera* (with *Soertsz*), for respondent.

June 24, 1928. DALTON J.—

This case arises out of a reference under the Land Acquisition Ordinance of 1876. The dispute is between the first and third defendants, who each claim the whole of the amount (Rs. 7,935) of compensation as against each other. The trial Judge found the first defendant was entitled to the whole sum, and from that decision the third defendant appeals.

Each trace their title back to a common owner, but for the purpose of understanding and deciding the questions that arise on this appeal it will be sufficient to set out the first defendant's title. The judgment of the Court below sets out all the other facts.

The property was seized on May 17, 1921, in District Court, Colombo, No. 204. This seizure was registered on the same day. Sale followed on July 9, 1921, to one D. A. Perera, but he never obtained a transfer of the property sold, probably owing to the fact that he died on September 22, 1921. His widow, Letitia Dissanaiké, obtained letters of administration (3 D 5) of his estate in District Court, Colombo, No. 574, on June 5, 1922. Thereafter one Mrs. Withams took out a writ in an action she had against the administratrix for the deficiency of an amount due to her from the estate under a mortgage decree. This land was seized and sold and purchased by Mrs. Withams, who obtained a Fiscal's transfer (1 D 3) of March 11, 1926. She sold and conveyed the property to one S. H. Fernando by deed 1 D 4 of May 24, 1926. He sold and conveyed it to the first defendant by deed 1 D 7 of June 4, 1926.

It will be observed here that no transfer was obtained after the sale to D. A. Perera. He died in September, 1921. A transfer was however obtained from the Fiscal on October 8, 1926 (1 D 5). This purports to be a conveyance to D. A. Perera himself. It was then pointed out to the District Judge that the conveyance should have been to the administratrix and he allowed what is called in the correspondence "a deed of rectification" to be prepared. The Fiscal then by deed 1 D 6 of October 10, 1927, after setting out what he had purported to do by deed 1 D 5, conveyed the property in question to the administratrix of the estate of the deceased purchaser. It may be added here that the first defendant himself also on November 19, 1927, by deed 1 D 8, got a conveyance of this property from the administratrix, apparently as a matter of abundant caution. This deed is attacked by the third defendant on the ground that the administratrix could not sell without special leave of the Court, but it is conceded that if deed 1 D 6 is good, the questions arising in respect of 1 D 8 need not be considered. The date of reference in the acquisition is September 1, 1927.

It is urged for the appellant that the first defendant cannot perfect his position after the action has commenced, a claimant in these proceedings being in the position of a plaintiff, and further that the deeds 1 D 5 and 1 D 6 were obtained by a person who was not in any way authorized to obtain them.

With regard to the deed 1 D 6, whatever it may be termed, I agree with the trial Judge that it is in effect a conveyance out and out by the Fiscal of the land purchased by D. A. Perera to the administratrix of his estate and not merely a rectification of an otherwise good and valid deed. In executing this conveyance it is also clear from the evidence that the Fiscal had the order of the Court to do as he did. Mr. Keuneman has questioned the right of a purchaser from a Fiscal's transferee approaching the Court for an order on the Fiscal to obtain a Fiscal's transfer in the name of his vendor so as to perfect his own title. He has cited no authority in support of his contention, and until some such authority is produced I am not prepared to disagree with the conclusion of the trial Judge on this point. On the facts as proved in this case I can see nothing objectionable on the part of the first defendant in this respect. This case differs from *Leelawathie v. Dingiri Banda*<sup>1</sup> relied upon in the course of the argument in this respect, namely, that there the appellant was seeking to obtain a conveyance in his own name. It was held he had no status to make such an application. On this point it must be noted that the petition and its supporting affidavit were deficient in several essential particulars, although we do not know what the deficiencies were. It is clear, however, from the judgment that the Court was satisfied that section 282 and the

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following sections of the Civil Procedure Code have not been interpreted so narrowly as Mr. Keuneman urges, otherwise it would seem that under the Code, if a purchaser dies after his purchase but before he could have any time or opportunity of getting a deed completed in his favour, the transaction could never be completed at all. An examination of the actual documents before the Court when the deed 1 D 6 was authorized further shows that the application was actually made to the Court by the Deputy Fiscal. It is true he was moved to do so by D. A. Perera, but the journal entry of October 4, 1926, is not strictly correct. Whether or not, if any objection had been raised on that date that D. A. Perera had no *locus standi* in the matter before the Court, he could have shown he was the agent of the administratrix does not appear. The Court must presumably have been satisfied with the right of the applicant, whether it be the Deputy Fiscal or D. A. Perera, to make the application. It is quite clear that the administratrix herself played an active part in the matter in seeking to perfect the first defendant's title, as is subsequently disclosed by the deed 1 D 8. It is not questioned now, in spite of the silence of the Code on the matter, that the legal representative of a deceased purchaser is entitled to ask for a conveyance from the Fiscal.

The further question raised is as to the right of the claimant to seek to perfect his position after the action was begun. It has been presumed in the lower Court, and in the argument before us, that the land acquired vested in the Crown on some date antecedent to the filing of the libel of reference or on that date, September 1, 1927. The deed 1 D 6 is not dated until October 10, 1927. It is clear therefore that, in respect of this argument, the date of vesting in the Crown is of paramount importance. It is difficult therefore to understand why that date was not definitely ascertained in the lower Court. It was therefore agreed that this date should be definitely ascertained for our information. We have now before us the certificate of acquisition issued under section 12 of the Ordinance. That certificate is dated October 28, 1927. It is from that date that the property vests in the Crown. The presumption of the trial Judge therefore that the rights of the parties vested in the Crown at any time before October 28, 1927, has no foundation in fact. When the certificate was signed, the administratrix had already obtained a conveyance from the Fiscal in respect of the rights of the purchaser. No question arises therefore of the deed 1 D 6 purporting to convey interests which had already vested in the Crown. It is not therefore necessary for us to consider what the position would be had title vested in the Crown prior to the deed 1 D 6 being granted, or whether the Judge's conclusion on that particular point is correct or not. Inasmuch, however, as 1 D 6 was obtained after the date of the libel of reference, one has to consider whether first defendant

was entitled to do as he did, namely, to seek to regularize his position then in view of the argument that at that the paper title was in the third defendant. It was urged on the authority of *Silva v. Fernando*<sup>1</sup> that the rights of the parties to an action have to be ascertained at the commencement of the action.

In making his reference to the Court under the Ordinance the Government Agent is required to give particulars of the land, the names of the claimants or others whom he may think interested in the land, and the amount of compensation. It is possible that at that point of time there may be no claimants, in which case machinery is provided calling for claims and for further proceedings. It is further enacted that proceedings under this Ordinance shall be analogous to those in an ordinary civil action. The date of the reference, it is urged, is the date of the commencement of the action. The Government Agent is the plaintiff and the claimants are named as the defendants. The inquiry is however not restricted to those persons who are named in the libel of reference, intervenients being entitled to come in and be joined as parties in the regular way (*Government Agent, Sabaragamuwa v. Asirwathan*<sup>2</sup>). It is true that the contesting parties here put forward a claim to the Government Agent, but the first defendant did not in fact file his claim in the action until February 9, 1928. I am unable to agree that the case cited (*Silva v. Fernando (supra)*) is any authority in these proceedings whereby to limit the claimants in the way that has been suggested in this case.

For the reasons set out it seems to me that the deed 1 D 6 is a good and valid deed. It was obtained by the administratrix of the purchaser at the Fiscal's sale, and its benefit enured to the first defendant, who had acquired the purchaser's interests. The subsequent deed 1 D 8 was in the circumstances quite unnecessary to vest title in the first defendant, and its validity need not therefore be considered.

The appeal must therefore be dismissed with costs.

DRIEBERG J.—I agree.

*Appeal dismissed.*

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<sup>1</sup> 15 N. L. R. 499.

<sup>2</sup> 29 N. L. R. 367.