1957 *Present :* **Basnayake, C.J., and Pulle, J.**

D. S. A. WIJESINGHE, Appellant, *and* C. A. KULATUNGA *et al.*, Respondents

S. C. 80—D. C. Hambantota, 144/5,640

Crown grant—Authentication thereof—Requirement of signature of " countersigning officer "—Acquisition of prescriptive title as against the grantees—Crown Grants (Authentication) Ordinance (Cap. 317), s. 2 (2).

A Crown grant given under the provisions of the Crown Grants (Authentication) Ordinance is not valid if it does not bear the signature of the " countersigning officer " referred to in section 2 (2). The fact, however, that the certificate bears the signature of the Assistant Private Secretary to the Governor, instead of that of the Private Secretary, is not a ground for saying that the grant is bad on the face of it.

Where a Crown grant in respect of a field was given to certain persons in the year 1928 but the contesting defendants and their predecessors in title had sole possession of the field from 1909 to 1947 without any acknowledgment of title in any one else—

Held, that, in spite of the Crown grant, the contesting defendants had a good prescriptive title.

APPEAL from a judgment of the District Court, Hambantota.

H. V. Perera, Q.C., with *A. F. Wijemanne*, for the plaintiff-appellant.

H. W. Jayewardene, Q.C., with *W. P. N. de Silva*, for the 2nd and 21st defendants-respondents.

A. L. Jayasuriya, with *N. Abeyasinghe*, for the 19th defendant-respondent.

Cur. adv. vult.

November 4, 1957. PULLE, J.—

The appellant is the plaintiff who sought to partition in this action a field of the extent of nearly 25 acres. There is no dispute as to the identity of the corpus but only as regards its name. The plaintiff calls it Kadawinnawalahena and the contesting defendants, namely, the 2nd, 19th and 21st call it Lihiniyanara.

The plaintiff bases his title on the Crown Grant P1 dated the 26th April, 1928, and the main argument on his behalf in this appeal centres round this document. There are twelve grantees in P1 to each of whom is given a named share calculated on the basis that had the wife of one Don Andiris Rajapakse, named Weeraman Senerat Ratnayake Babahamine, and her brother, one Don Tiyadoris Weeraman, been alive at the time of the grant each would have been given a half share of the land. The twelve grantees fall into two groups, the first eight can be described as the representatives in interest of Babahamine and the last four as the representatives of Don Tiyadoris.

If the Crown Grant can be regarded as the common source of title the plaintiff is entitled to succeed. The case for the contesting defendants, however, is that their title began with possession at a date much anterior to the grant, and that that possession was on the basis that Don Andiris Rajapakse was the sole owner of the land and that there was no acknowledgment of title in any one outside the line of devolution of Don Andiris Rajapakse.

The question of possession loomed large in the trial court. A considerable volume of oral and documentary evidence was placed before the learned trial Judge on which he held as a matter of "irresistible conclusion" that Don Andiris Rajapakse and his heirs and successors in title had been in possession of the land from 1909 to the date of action and thereafter, and that, in spite of the Crown Grant, none of the heirs and successors in title of the grantees had possession except the heirs and successors in title of Don Andiris Rajapakse.

Before dealing with the submissions on behalf of the plaintiff it is necessary to state a few further facts. The 2nd defendant who was married to a daughter of Don Andiris gave evidence in this case and it has been accepted in its entirety. According to him the land in suit was given to Don Andiris and his wife in exchange for a land of theirs called Joolauwela which was taken over for the construction of a tank. Barring the recitals in the Crown Grant the circumstances in which it came to be executed are shrouded in obscurity. A curious feature about the grant is that while it bears the date 26th April, 1928, it was not registered till 3rd August, 1946. Very soon afterwards the plaintiff became active and purchased on a number of deeds shares on the basis of the Crown Grant. The last of such deeds is P3 of 16th June, 1947, and on 10th July, 1947, he filed the present action with, according to the trial judge, no other object than to test the validity of the grant. The plaintiff himself did not give evidence but apparently he felt he had a powerful ally in one of the children of Don Andiris who gave evidence for him. This son is the witness Don Davith Rajapakse whose son married the plaintiff's daughter in 1944. On 22nd May, 1947, Don Davith executed the deed P2 by which he conveyed an undivided 1/10th share to the plaintiff. Don Davith was one of the five sons of Don Andiris who according to the grant was entitled to a 1/2 share. The learned trial judge had no difficulty in finding that Don Davith executed P2 with no other object but to assist his son's father-in-law to help him to as large a share of the field as possible. He was one of the executors of the last will of Don Andiris and had inventorized the entirety of the land as forming part of the estate of his father. His attempt to make out that shares of the produce were divided among the heirs and successors of Tiyadoris was completely discredited and acting on the evidence mainly of the 2nd defendant the trial judge held that since 1909 the working of the field and the sharing of the produce were on the footing that Don Andiris alone was the owner of the field.

There were two findings in regard to the Crown Grant which were attacked by learned Counsel for the appellant. The first of these arises on a point of contest raised at the trial and formulated as follows :

> " Was the land to be partitioned at the disposal of the Crown in 1928 ? If not, did the Crown Grant convey any title to the purchaser ? "

It is obvious that from 1909 to 1928 sufficient time had not elapsed for acquisition of title by prescriptive possession as against the Crown. That the land in suit was at one time the property of the Crown was recorded as a matter of admission at the commencement of the trial and is also implicit in the answer of the 2nd defendant which is to the effect that a land belonging to Don Andiris was submerged by a tank at Mamadola and " the said land Lihiniyanara was given to the said Don Andiris Rajapakse in exchange therefor by Government ". I am unable to agree with the finding that at the date of the grant the land was not at the disposal of the Crown.

The trial judge went on also to hold that on the face of it the Crown Grant did not comply with the provisions of the Authentication of Crown

Grants Ordinance (Cap. 317) and was, therefore, not an instrument capable of conferring any rights on the grantees. He says that the signature of the Governor by means of a stamp has only been certified by an Assistant Private Secretary. Section 2 (2) of the Crown Grants (Authentication) Ordinance provides that every signature by means of a stamp " shall be attached by or in the presence of the Private Secretary to the Governor or other person authorised by the Governor ". The fact that the certificate bears the signature of the Assistant Private Secretary is not a ground for saying that the grant is bad on the face of it. The Ordinance also provides that every grant by means of a stamp shall be countersigned by a person appointed by the Governor for the purpose and he is referred to as the " countersigning officer ". There is no signature of the " countersigning officer " on the grant and I am inclined to agree with the judge, although we did not have the advantage of hearing an argument on that point, that the absence of the signature of this officer rendered the grant ineffective. The grant was an inchoate instrument.

After dealing with the validity of the Crown Grant the judge said,

" .....if P1 was a genuine Crown Grant it had not been acted upon ; no one had possessed this land on the basis that the grantees on the Crown Grant P1 were owners of it. On the other hand all the evidence in this case which I accept is to the effect that this land had been possessed on the footing that Andiris Rajapakse was the sole owner of it from 1909." He also held that the name of the land is Lihiniyanara. I am of opinion that on these findings the judge was entitled to hold, as he did, that shares in the land should be allotted on the basis that Don Andiris was the sole owner and not on the basis of the shares set out in the Crown Grant. The possession of Andiris from the beginning was *ut dominus* and it continued on that footing to the end. The nature of that possession could not be altered by the bare execution of the grant unaccompanied by the acknowledgment by Andiris Rajapakse or any of his successors of any right of co-ownership in the representatives in interest of Don Tiyadoris.

The legal result flowing from the findings of fact in this case is supported by the judgments in *Fernando et al. v. Podi Nona* [1] and *Tennekoon v. Podisingho et al.* [2] and the result is that in spite of the Crown Grant the successors in title of Andiris Rajapakse had at the date of action acquired a good prescriptive title not only as against the persons falling within the Don Tiyadoris group but even as against the Crown.

In my view there is no reason to disturb the decree and the appeal should be dismissed with costs.

BASNAYAKE, C.J.—I agree.

Appeal dismissed.

[1] *(1955) 56 N. L. R. 491.*

[2] *(1945) 46 N. L. R. 373.*