

Present : De Sampayo J.

1917.

SOBITA UNNANSE *v.* PERIS APPU.

365—C. R. Ratnapura, 14,986.

Action in respect of roads or road reservations—Can the Chairman of a Provincial Road Committee represent the Crown?

The Chairman of the Provincial Road Committee or of the District Road Committee has no authority to appear in Court on behalf of the Crown, or to sue even in respect of roads. It is the Attorney-General who should represent the Crown in judicial proceedings, and it is the Provincial Road Committee or the District Road Committee themselves that, under section 12 of the Thoroughfares Ordinance, 1861, have the power to sue in respect of certain matters though it is doubtful whether even they can sue to vindicate title to land alleged to be road reservations.

THE facts are set out in the judgment. In this action the plaintiff-appellant sued the defendant-respondent for declaration of title to the land called Ambalamehenaindikadagawairawalla, of 3 acres extent, together with the house standing thereon.

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The defendant did not file answer. But the intervenient, the Chairman of the Provincial Road Committee, claimed the land in dispute as the property of the Crown, and further stated that the house standing on this disputed land stood on the road reservation, which was vested in the District and Provincial Road Committees.

The learned Commissioner of Requests (F. D. Peries, Esq.) held as follows on the point relevant to this report:—

The plaintiff and his witnesses admit that the house stands within three fathoms of both the minor and Gansabhawa roads, at the junction of which the house and that portion of the land on which the house stands, and which I understood the Chairman, Provincial Road Committee, as the intervenient, claims as property in charge of the Provincial Road Committee, that portion of the land coming within the meaning of a "road" as defined in section 2 (d) of Ordinance No. 23 of 1910. A space of 33 feet from the middle of the minor road under this provision of law falls within the meaning of the word "road." The minor road is indisputably in charge of the Provincial Road Committee. It follows, therefore, that the space of 33 feet from the middle of the minor roads, the Gansabhawa road, too, being a minor road, is vested in that Committee. No evidence is required to prove that minor roads, though vested in the Provincial Road Committees for management and control under the provisions of the Ordinance No. 10 of 1861, are the property of the Crown. The plaintiff has endeavoured to prove prescriptive title to the land, but in the circumstances that the bit of land claimed by the intervenient is property vested in the Provincial Road Committee, and as such Crown, his possession must cover a third of a century. Admittedly he has endeavoured to prove his possession as from the date of the informal document P 2, viz., May 16, 1900. This period falls short of the requirement. On the fourth issue, therefore, I hold that the plaintiff has not acquired a prescriptive title, and on the fifth issue I hold in the affirmative. Although the plaintiff and his witnesses stated in the evidence that the two roads are within three fathoms of the house, the evidence of the Ratamahatmaya is that the house borders the two roads, with hardly space between for drains. This shows clearly that the house and the land claimed by the intervenient is within Crown "road." I therefore dismiss the plaintiff's action in so much as it refers to the land claimed by the intervenient as belonging to the roads described above, and the house thereon built and in the occupation of the defendant, with the costs of the intervenient.

The plaintiff appealed.

R. L. Pereira, for plaintiff, appellant.

Bartholomeusz (with him *P. M. Jayawardene*), for intervenient respondent.

December 21, 1917. DE SAMPAYO J.—

The plaintiff alleged that the defendant had taken on rent from him a certain house and premises, and sued for arrears of rent and ejectment. The defendant was in default, and judgment should have gone for the plaintiff in the usual way, but none has yet been

entered, and the whole matter has been lost sight of on account of an extraordinary intervention. The Chairman of the Provincial Road Committee and District Road Committee, Ratnapura, was allowed to intervene and contest the plaintiff's right to the land and the house. In the answer filed by him he stated that the house in dispute stood on the road reservation, which was alleged to be vested in the Provincial and District Road Committees. It appears that there is on one portion of the land a District Road Committee bungalow, but the plaintiff in his plaint expressly excluded it from his claim. Before the trial commenced the Commissioner recorded that the intervenient did not claim the land outside that bungalow and premises, although he said that the rest of the land also was the property of the Crown. This appears to me to put the intervenient out of Court at once. But an issue was stated as follows: "Is the land in dispute the property of the Crown in charge of the District Road Committee?" Thereupon the plaintiff's proctor suggested an issue as to whether the Chairman could intervene on behalf of the Crown. The Commissioner refused to allow this issue, though it is obvious that it went to the root of the whole intervention and should have been considered. The fact is that the intervention is wholly out of place, and should never have been allowed. The Chairman of the Provincial Road Committee or of the District Road Committee has no authority to appear in Court on behalf of the Crown, or to sue even in respect of roads. It is the Attorney-General who should represent the Crown in judicial proceedings, and it is the Provincial Road Committee or the District Road Committee themselves that, under section 12 of the Thoroughfares Ordinance, 1861, have the power to sue in respect of certain matters, though I doubt whether even they can sue to vindicate title to land alleged to be road reservations. I need not for the purpose of this appeal enter into the question whether, as argued on behalf of the intervenient, the definition of "road" in section 4 (d) of the Ordinance had any relevancy. The whole case appears to me to have gone awry. The Commissioner dismissed the plaintiff's action "in so much as it refers to the land claimed by the intervenient as belonging to the roads described above and the house thereon built by and in the occupation of the defendant," but there is no order on the plaintiff's claim so far as the defendant is concerned. This judgment cannot stand.

I set aside the judgment appealed from, and direct that judgment be entered for the plaintiff against the defendant as prayed for, with costs, but without prejudice to any claim of the Crown or of the Provincial and District Road Committees to the land in question, or to any right of action in respect thereof. The intervenient should pay the costs of the proceedings in the Court of Requests since the date of the intervention, and also the costs of this appeal.

Set aside.

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