1949 *Present :* **Nagalingam J. and Pulle J.**

PONNIAH *et al.*, Appellants, *and* CHELLIAH *et al.*, Respondents

S. C. 45—D. C. Chavakachcheri, 2,760

Evidence Ordinance—Entries in public documents—Admissibility and proof of—Sections 34 to 38, 84.

Action rei vindicatio*—Description of land in dispute in deeds relating to adjoining properties—Probative value.*

Entries of statements regarding title to land made in documents which were prepared under sections 10 and 11 of the Defence (Paddy Cultivation) Regulations, 1943, fall under section 35 of the Evidence Ordinance and are admissible without further proof such as by calling the persons who wrote or made the entries or statements.

Where a land, the title to which is in dispute, is alleged to belong to a temple, the mere description of it in language suggesting that it belongs to the temple in the deeds relating to the lands adjoining the disputed land cannot be regarded as conclusive legal proof of the title of the temple to the land. While a description of a parcel of land in the deeds relating to the adjoining properties may furnish corroboration of title it does not constitute direct evidence of legal title.

APPEAL from a judgment of the District Court, Chavakachcheri.

This was an action *rei vindicatio* in respect of a paddy land.

In proof of possession by the second defendant, who was the vendor to the plaintiff, certified copies of certain documents prepared under sections 10 and 11 of the Defence (Paddy Cultivation) Regulations, 1943, were produced. According to those sections the duty is cast on every owner or cultivator of land which is cultivated with paddy to give information relating to (1) the names and addresses of the person or persons entitled to take or receive any part of the produce of the land, (2) the share or shares of the produce to which such person or persons may be entitled. The regulations also empower the proper authority to require any person present at the time of his inspection or assessment to furnish information as to the names and addresses of the persons who are known to be entitled to shares in such paddy and the respective shares claimed by such persons.

It was argued that the documents which were produced did not stand on a level higher than that of private documents and should have been rejected in the absence of express proof given by the officers who made or compiled them.

C. Thiagalingam, with *S. Mahadeva*, for the first and third defendants, appellants.

S. J. V. Chelvanayagam, K.C., with *C. Vanniasingham*, for the second defendant respondent.

C. Chellappah, with *S. Sharvananda*, for the plaintiff respondent.

Cur. adv. vult.

1—J. N. A 96949-1,042 (4/50)

December 14, 1949. NAGALINGAM J.—

This is an appeal from a judgment of the learned District Judge of Chavakachcheri declaring the plaintiff entitled to an allotment of land called Kadatkiranchithalavuvayal described in the schedule to the plaint. The appellants, who are the first and third defendants, contest the finding of the learned District Judge on the ground that he has misdirected himself both on the facts and the law.

This being an action for *rei vindicatio* the burden is primarily on the plaintiff to establish his title. The second defendant respondent who is the vendor to the plaintiff traces his title from a thombu register of 1822 in which, *inter alia*, a land bearing the name of the land in dispute and in extent 25 lachams p.c., is registered in the name of one Sinnapillai, wife of Kadirgaman. That the description of the land given in the thombu—or the lack of description therein—is such that direct identification of the land in the register with the land in dispute is not possible is conceded; further, the entry being one made in the year 1822, oral testimony of identification is also out of the question.

The second defendant, however, takes upon himself to say that the land referred to in the thombu register is the identical one that is referred to in this action, and he attempts to co-relate these facts by reason of the genealogical tree to which he deposes as well as by reference to certain subsequent deeds and entries in Government registers; but both the deeds and the registers are themselves not later than 1837, so that one has really to depend entirely on the oral testimony of the second defendant which cannot but be regarded in any other light than that it is based upon information gathered by him from members of his family.

I do not therefore propose to deal with the old documents excepting to observe that they do not furnish any proof of a cogent character to sustain the second defendant's case that the land in dispute belonged to his ancestors. There are, however, later documents which certainly do support the second defendant's case insofar as possession at least is concerned. Those are the documents 2 D 5 to 2 D 9.

Of these documents objection was taken by Counsel for the first and third defendants to the admissibility of documents 2 D 6 to 2 D 9 but the learned trial Judge overruled the objections and admitted the documents in evidence. The objections have been reiterated before us on appeal. The documents 2 D 6 to 2 D 8 are certified copies issued under the hand of the Divisional Revenue Officer of Tenmaratchy and 2 D 9 is a permit under the hand of the Kerama Vidane. The documents 2 D 6 to 2 D 9 are documents purporting to have been prepared under the Defence (Paddy Cultivation) Regulations, 1943. According to sections 10 and 11 of those regulations, published in the Reprint of October 1946, at page 74 *et seq.* the duty is cast on every owner or cultivator of land which is cultivated with paddy to give certain information of which only the following need be noticed: (1) the names and addresses of the person or persons entitled to take or receive any part of the produce of the land, (2) the share or shares of the produce to which such person or persons may be entitled. The regulations also empower the proper authority to require any person present at the time of his inspection or

assessment to furnish information as to the names and addresses of the persons who are known to be entitled to shares in such paddy and the respective shares claimed by such persons.

It has been argued that these documents do not stand on any higher level than that of private documents. It is said that the regulations do not anywhere require the officer to maintain " a paddy assessment register " of which 2 D 6 is said to be an extract. While it is true that no specific direction is to be found in the regulations that a register should be maintained, the requirement that the proper authority should obtain the necessary information from persons who would ordinarily be in a position to furnish accurate information in regard to those matters must lead to the inevitable conclusion that the proper authority after receiving the relevant information should embody it in writing. It cannot be argued that he must get the information orally and after listening to the information merely carry it at best as a mental record made by him. I do not think Government business could be conducted on such a basis, and though there is no express provision with regard to reducing the information to writing or to tabulating it in a form capable of easy reference, nevertheless, when the information was committed to writing by the proper authority in a tabular form thus entitling information in regard to a series of paddy fields to be referred to compositely as a register, the register must in fact be regarded as a document prepared by a public servant in the discharge of his official duty.

2 D 7 and 2 D 8 are extracts from a book of assessment in regard to the yield of the various paddy fields and this particular document has reference to the yield of the land in question and the shares allotted to the various persons entitled to shares in the paddy harvested. These, too, therefore, are documents that are kept in the course of official business by a public servant. 2 D 9 is a copy of a permit said to have been issued by the proper authority under the Defence Regulations to enable the first defendant as cultivator to remove paddy from the field to his residence. This document too falls in the same category as 2 D 7 and 2 D 8. These documents 2 D 6 to 2 D 9 are *prima facie* entries in a public or other official book, register or record made by one or more public servants in the discharge of their official duty. That they contain statements of facts relevant or apposite to the case there is no question. Section 35 of the Evidence Ordinance makes these entries themselves relevant facts. Learned Counsel for the appellants urges that even if these entries be regarded as falling under section 35 of the Evidence Ordinance, yet they must be proved like any other private document by calling the person or persons who prepared the document. He based his contention upon the fact that section 35 falls under Part I of the Evidence Ordinance which deals with the " relevancy of facts ". As there is no section of the Evidence Ordinance in Part II relating to proof which could be relied upon as exempting the class of documents referred to in section 35 from being proved as any private document should be, the document, it is contended, should have been rejected in the absence of express proof given by the officers who made or compiled them.

Sections 34 to 38 of the Evidence Ordinance appear in Chapter 2 of Part I of the Ordinance, not under the sub-heading of " Relevancy of

facts" but under the sub-head "Statements made under special circumstances". As I read these sections 34 to 38, the opinion I form is that the entries or statements in the documents referred to in those sections are relevant not only in the sense that they are pertinent to the matter under investigation and have a bearing on the questions before the Court, but also that *they are admissible without further proof* such as by calling the persons who wrote or made the entries or statements.

To take, for instance, section 34, which declares that entries in books of account regularly kept in the course of business are relevant, what need be proved is that the books of account were in fact regularly kept in the course of business and that will have to be done by means of oral testimony. Once evidence is given that the books have been regularly kept in the course of business the entries in the books become admissible without proof of the entry having been made by any particular person or of the knowledge the person had who did make the entry, for otherwise this provision would be unnecessary as such an entry is already declared relevant under one or more of the preceding sections 5 to 16 of the Ordinance and there would have been no further necessity to enact this particular section.

To take section 38, which declares that when the Court has to form an opinion as to the law of a country any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country is relevant, it cannot be said that anything more is required to be done than to produce such a book. It has, however, been said that section 84 of the Evidence Ordinance permits such a course in this instance, but section 84 merely says that the Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of a country. The presumption of genuineness is far removed from proof of the contents of the document. Section 84 merely prevents the contention being put forward that the book purporting to be published under the authority of the Government of a country should *aliunde* be proved to have been so published. It is therefore clear that when section 38 declares any statement of law contained in a book to be relevant it means that not only is such statement of some bearing in regard to the questions in issue before Court but also that such statement of the law is admissible without further proof. No local case has been cited in regard to the construction of these sections.

Indian commentators on the Law of Evidence have also adopted this view, and judicial interpretation by the Privy Council is to the like effect. To take the most popular Indian publication, in *Woodroffe & Ameer Ali's Law of Evidence*[1] appears the following passage in a general commentary to the sections referred to :

"Two general classes of statements are dealt with in this portion of the chapter—(*a*) entries in books of account regularly kept in the course of business, (*b*) entries in public documents or in documents of a public character. Both classes of statements are relevant *whether the person who made them is or is not called as a witness* and

[1] *9th ed. at p. 375.*

whether he is or is not a party to the suit, and *are admissible owing to the special character and the circumstances under which they are made* which in themselves afford a guarantee for their truth."

In discussing particularly section 35, the learned authors say in regard to entries referred to in this section[1] :—

"They are admissible *though not confirmed by oath or cross-examination*, partly because in some cases they are required by law to be kept and in all are made by authorised and accredited persons appointed for the purpose and under the sanction of the official duty, partly on account of the publicity of the subject-matter and in some instances of their antiquity."

Similar observations are to be found in discussing each and every one of the other sections falling under the sub-head of "Statements made under special circumstances."

The Privy Council placed a similar construction as early as 1879 on this section in the case of *Lakerajkuar Mahpal Singh*[2]. The question that arose there was as regards the admissibility of certain village administration papers in which was recorded the mode of devolution of property governing certain families. These administration papers were prepared in pursuance of certain regulations made in that behalf. In regard to the contention that the entries by themselves were not admissible, their Lordships observed :

"There can be no doubt that the entries in question, supposing they bear the construction already given to them, state a relevant fact, if not the very fact in issue, namely, the usage of the Bahrulia Clan. *If so, then the entry having stated the relevant fact*, the entry itself becomes by force of the section a relevant fact, that is to say, *it may be given in evidence as a relevant fact* because, being made by a public officer it contains an entry of a fact which is relevant."

I hold, therefore, that the documents 2 D 6 to 2 D 9 were properly admitted by the trial Judge.

Now, these documents show that during the paddy cultivation season of 1944–45 and 1945–46 the first defendant cultivated the field in question as a lessee under the second defendant's brother, Eliyathamby, and that the first defendant received the cultivator's share while Eliyathamby appropriated the landowner's share. I find it difficult to believe that the first defendant did not become aware of the fact that information relating to the names of persons who were entitled to shares in the paddy crop was being collected by the authorities or that he did not know that before he could transport paddy from the field to his house he had to get a permit. The first defendant as cultivator of the field would become acquainted with the legal requirements in vogue during World War II that transport of paddy even from the field to the cultivator's house or barn was prohibited excepting under permit. Those requirements would have been common knowledge in the village and the denial of the first defendant is significant, for had he admitted knowledge of these

[1] *at p. 383.* [2] *I.L.R. 5 Cal. 744.*

requirements he would not have been able to explain the entries in documents 2 D 5 to 2 D 9, which are adverse to the case set up by him and the third defendant. The first defendant, therefore, one can easily see, adopted the simple expedient of feigning ignorance of the duties cast upon cultivators by these regulations. These considerations lead me to the view that the second defendant's evidence is true, that the first defendant was a cultivator under his brother Eliyathamby and that after the latter's death, when the first defendant was asked to surrender the field, he evolved a scheme whereby he could keep at bay the second defendant and his vendee by setting up *jus tertii* in the person of the third defendant who was on his application added a party to the suit.

It is of some importance to focus attention on the answers filed by both the first and third defendants. The first defendant in his answer did not expressly state that he was a tenant under the third defendant. Although the plaintiff had set out in his plaint that the first defendant had been a cultivator under the second defendant and that he had to come into Court because the first defendant alleged the land belonged to the temple at Chithamparam, the first defendant merely reiterated in his answer that " the field belongs to the Chithamparam Ambalavanar Swami Kovil and the first defendant is possessing the land for the last eighteen years and is giving the ground share of the said land for the benefit of the said Temple." But even more important than this statement in the answer is the further statement that he possessed the field " on behalf of the said Chithamperam Ambalavanar Kovil at India for over ten years and *have* acquired prescriptive right and title to the said land in terms of section 3 of Ordinance No. 22 of 1871."

No explanation has been given by the first defendant why he was at pains to assert the title of the Chithamparam Temple and not set out explicitly the fact that he was a tenant under the third defendant and leave it to the third defendant to set out and defend whatever title he may have against the plaintiff.

After answer of the first defendant was filed, the case was set down for trial and it was on the trial date that an application was made on his behalf that the third defendant should be added as a party defendant for the purpose of effectually disposing of the rights of parties. There is evidence which shows that after the date was given to add the third defendant as a party to the action the first defendant and the Udayar of the area where the land is situated both made a trip to Chithamparam and it was subsequent to that trip of theirs that a proxy granted by the third defendant was filed by the first defendant's Proctor.

In the third defendant's answer the third defendant expressly sets out in paragraph 3 thereof that " the land belongs to the Chithamparam Ambalavanar Swami Temple." He does not say that the land belongs to any *maddam* or pilgrim house but, true, he goes on to say that he possessed the land " for the benefit of the said Temple and the *maddam* called Pararajasekeram Maharaja Kattalai Kalliandandu Maddam attached to the said temple." The third defendant also claimed in his answer to be in possession of the said land " as manager and as trustee of the said temple and maddam."

The third defendant, it would be noticed, has singularly failed in his answer to set out the basis of his title to be manager and trustee of the Chithamparam Ambalavanar Swami Temple or the title by which the field in question became vested in the temple. One would have expected that the party who had a legitimate and *bona fide* right as trustee of a temple to be in possession of lands on its behalf would have, in the forefront of the assertion of his title, set out both these matters in full. What is still more surprising is that the third defendant not only did not give evidence but even failed to be present in Court at the date of trial, leaving the door open for the allegation that he was either unconcerned with the result of the litigation or that he could not support the averments in his answer.

At the trial, the first defendant admitted in express terms that "the third defendant was the trustee of the maddam and *not of the temple*. Maddam is different from the temple" and also that "*the third defendant* or any other trustees *are not claiming on behalf of the* temple." So that, though the first defendant in his answer had himself claimed to have held the property for the temple and the third defendant in his answer expressly stated that he as manager and trustee of the temple claimed to possess the land, yet at the trial evidence destroying these assertions was given by the first defendant himself.

To any Hindu the claim that the third defendant or the first defendant was holding some property belonging to the Chithamparam Temple as trustee of it would be obvious was a preposterous one. It would be on a par with a claim made by a person in Ceylon to hold some property in the Island as trustee of St. Peter's at Rome. The Chithamparam Temple, as every Hindu knows, has hereditary trustees belonging to certain well recognized families of Brahmin priests, and those trustees are the persons in whom the temporalities of the temple are and can be vested, and any person claiming to hold on behalf of the temple must show a title derived from those trustees and no less. Hence it was that the first defendant had perforce to admit that no one, not even the third defendant, was holding the field as trustee for the Temple.

The appellant's case, therefore, had to suffer a change, and this change was partially adumbrated in the answer filed by the third defendant when he said that he was holding the property for the benefit of the temple and the maddam, and it was then sought to establish that the field was possessed on behalf of the maddam, but this contention has been demonstrated to be wholly untenable. It was shown by documentary evidence that when there was litigation between the third defendant and another person who claimed to be trustee along with him of the *maddam*, not only was a full list of all the properties belonging to the *maddam* set out but the third defendant was appointed trustee for the *maddam* of the lands set out in the said list. That list, it is conceded, makes no reference to the land in dispute, so that the claim to hold the field on behalf of the *maddam* too fails.

Strangely, however, another line of argument was adopted to show that the land belongs to the temple. No deed, no registers, no documents of any kind in favour of the temple have been produced by the appellants to sustain their statement that the land in fact is a temple land, but

they sought to establish it in a most circuitous and indirect manner. Certain deeds relating to the lands adjoining the land in dispute have been produced and it has been pointed out that the land in dispute is referred to in describing the boundaries of those lands as the land belonging to Chithamparam Ambalavanar Swami Temple. But the fact that a number of people did call a piece of land as belonging to the Ambalavanar Swami Temple at Chithamparam does not establish that the land in fact belongs to the Ambalavanar Swami Temple. The most that can be said is that the land at some time or other did belong or was regarded as belonging to the Ambalavanar Swami Temple. A common instance in the southern parts of the Island is to find a land described as "Pansalwatta" or "Hettigewatta" but that does not mean that the land continues to belong at all times to a *pansala* or a Chetty. It is well-known that where an owner of land permits a *pansala* or an *avasa* to be put up though without ever intending to dedicate it to the Sangha, the land acquires the name of Pansalwatta, but that is far from saying that the title to the land in fact is lost by the true owner.

In this case, there is not an iota of evidence tending to show who it was that granted this land to the temple at Chithamparam which is situated beyond the seas, nor is there any evidence to show how the grant was made. It is common in Jaffna that an owner may on his death-bed give an oral direction that a cow, a tree or a piece of land should be given to a Temple but, ignoring for a moment movable property, it would be obvious that transfer of immovable property cannot be effected orally under our law, and any such gift or bequest would be of no avail to vest the title thereto in the temple or to deprive the heirs of their right to inherit the property as forming part of the assets of the deceased. It is also equally true, however, to say that an oral dedication even of immovable property by an owner is more often than not sought to be given effect to by the heirs of a deceased person by not effecting a division of the land among the heirs but treating the land as though it in fact had properly and effectively been transferred to the temple. The heirs, however, themselves more often than not would not have knowledge of who the trustees are of the temple or to whom such a land could be transferred, and the trustees themselves would not, even if communicated with, trouble themselves to take possession of a small plot of land of no great value and of which the income would be very small. What then happens is that one or more of the heirs continues in possession and being in ignorance as to the proper person to whom he could remit even the income continues to accumulate the income as far as it is in his power to do so in the hope that some day, when he goes on a pilgrimage to the temple, which it is the ambition of every pious Hindu in Jaffna to do, he would take it and hand it to some person in Chithamparam on behalf of the temple. But it by no means follows that these pious intentions are always carried out. When the heirs find themselves in needy circumstances the pious wishes of the deceased are ignored and they continue to deal with the land as though there was no grant of it to the temple. Even where the heirs are in affluent circumstances, it is not unknown that the land, the subject of an alleged grant, continues to be treated as private property for the reason that the income is small and the difficulties of ascertaining to whom the income should be

remitted and of so remitting are, if one visualises the state of the country in the 1830's or 1840's, that the land is dealt with as private property, but the notoriety the land had gained as temple land dies hard and continues to be used by all and sundry.

I do not, therefore, think that the mere description of the land in language suggesting that it belongs to the Chithamparam Temple in the deeds relating to the lands adjoining the disputed land can be regarded as legal proof of the title of the temple to the land. While a description of a parcel of land in the deeds relating to the adjoining properties may furnish corroboration of title, I do not think that those descriptions by themselves are entitled to weight as though they constituted direct evidence of legal title. The result is that the right of the third party under whom the first defendant claims to have possessed the land has not been established nor the fact that the first defendant did in fact hold under the third defendant.

The first defendant has therefore failed to substantiate his defence, while the plaintiff's case is amply supported by the evidence led in these proceedings.

The judgment of the learned District Judge is therefore affirmed and the appeal is dismissed with costs.

PULLE J.—I agree.

Appeal dismissed.

1950 *Present :* **Jayetileke S.P.J. and Pulle J.**

SANGARALINGAM PILLAI *et al.*, Appellants, *and* MOHAMADU, Respondent

S. C. 509—D. C. Colombo, 16,589

Rent Restriction Ordinance—Premises of which a director of a company is owner—Tenant cannot be ejected to expand business of the company—Ordinance No. 60 of 1942, Section 8 (c).

A director of a company is its paid servant and cannot avail himself of the provisions of section 8 (*c*) of the Rent Restriction Ordinance to claim a building, which is owned by himself, for the purpose of carrying on the business of the company therein.

APPEAL from a judgment of the District Court, Colombo.

F. A. Hayley, K.C., with *V. A. Kandiah*, for plaintiffs appellants.

S. J. V. Chelvanayagam, K.C., with *M. H. A. Aziz*, for defendant respondent.

Cur. adv. vult.

February 22, 1950. JAYETILEKE S.P.J.—

This is a case arising under the Rent Restriction Ordinance, No. 60 of 1942. The plaintiffs who are the owners of premises No. 235, Norris Road, Colombo, sued the defendant, who is carrying on business in the