Present: Fisher C.J. and Drieberg J. 1927.

DINGIRI BANDA *et al. v.* PODI BANDARA.

477—D. C. Ratnapura, 4,410.

Waste Lands Ordinance—Admission of claim—Absolute title—Claim on behalf of co-owners—Ordinance No. 1 of 1897, s. 4 (1).

Where an order is made under section 4 (1) of the Waste Lands Ordinance containing the simple admission of a claim,—

Held, that the order embodying the admission did not give absolute title to the claimant.

Kiri Menika v. Appuhamy [1] distinguished.

APPEAL from a judgment of the District Judge of Ratnapura.

H. V. Perera (with *Dereniyagala*), for plaintiffs, appellants.

H. H. Bartholomeuz, for defendant, respondent.

October 21, 1927. FISHER C.J.—

I have read the judgment of my brother Drieberg, with which I entirely agree. I would only add that the respondent appeared before the Settlement Officer and laid claim to the land expressly on behalf of himself and his co-owners. There is nothing in the Waste Lands Ordinance to make it unlawful or improper for one of several co-owners to make a claim on behalf of himself and his co-owners, and when he does so I think the co-owners must be regarded as persons making claim under the Ordinance.

DRIEBERG J.—

This action was brought for the partition of a land 40 acres and 11 perches in extent. The plaint alleged that it was the property of associated husbands, Appuhamy and Mudianse. The 1st plaintiff-appellant, the 2nd plaintiff-appellant, and the 6th defendant, the respondent, are their children. The other parties derive their title from the three other children of these two persons.

The respondent admitted the pedigree filed with the plaint, but he denied that Appuhamy and Mudianse were the owners of the land; he pleaded that the land had been dealt with under section 4 (1) of the Waste Lands Ordinances of 1897, 1899, and 1900, and that he had been declared the purchaser of it. This is however a wrong description of what was done.

[1] *(1916) 19 N. L. R. 298.*

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After recording the evidence of the Reference Clerk and examining the documents showing the dealings with this land, the learned District Judge held on the authority of *Kiri Menika et al. v. Appuhamy et al.*[1] that the respondent had acquired absolute title to the land and he dismissed the action.

It is necessary to examine fully how this land was dealt with in the proceedings under the Waste Lands Ordinance.

By Proclamation (D 1) of March 24, 1911, 1,900 acres in the village of Marapona were proclaimed under section 1 of the Ordinance. On May 3, 1911, the respondent by his letter P 1 claimed that he and his brothers were the owners of certain *panguwas* in the village, that he had documentary evidence to prove their right, title, and interest in them, such as notarial deeds, *wattorus*, &c., and concluded with a prayer that the Settlement Officer should inquire into their rights to these *panguwas* and " do justice."

This petition was treated as a claim and there was an inquiry, at which the respondent said that he claimed by inheritance. He sought to prove that these were ancestral lands by the production of a registered ola grant by Pileme Talawe to an ancestor of his.

On January 29, 1912, the respondent and the Settlement Officer entered into an agreement (6 D 4) under section 4 (1) of the Ordinance; by this the Settlement Officer agreed to settle a 10-acre lot as private property outside the Waste Lands Ordinance and to declare the respondent the owner of an allotment of 40 acres more or less, shown roughly as No. 16 in lot 31 in the sketch attached to the notice. This is the lot in dispute and now appears as lot 31CH of 40 acres and 11 perches in the published order. The respondent agreed to withdraw all claims to the remainder of the lands in the notice, and the agreement was further subject to the claims of all the other claimants being withdrawn or dismissed by judicial decree or settled outside the Ordinance.

On January 18, 1918, the order made under section 4 (1) of the Ordinance was published; this order (6 D 5) is in the form of a simple admission of the claim of the respondent to lot 31CH; it contains no reference to the agreement, and deals only with this lot.

On February 8, 1918, another order (6 D 6) was published setting out the agreements entered into with the several claimants, among them the respondent, and declaring to be the property of the Crown the land claims to which had been withdrawn. This order contains no reference to the order 6 D 5.

At the trial the learned Judge made the following note: " The point for decision now is whether this land vested absolutely in

[1] *(1916) 19 N. L. R. 298.*

the 6th defendant in terms of the settlement published in the *Ceylon Government Gazette* No. 6,920 of January 18, 1918," and in his judgment he held that the order had that effect.

Mr. H. V. Perera, for the appellants, questioned the correctness of the decision in *Kiri Menika et al. v. Appuhamy et al.* (*supra*); it is not necessary to go into that question, for assuming the correctness of the principle in that case as explained in the later case of *Gunasekera v. Silva et al.*,[1] viz., that it applied only to where the admission of a claim proceeds upon an agreement of mutual concession between claimant and Crown, the admission in 6 D 5 cannot be treated as one of that nature.

The order 6 D 5 was a simple admission of the respondent's claim.

Section 4 (1) provides for two modes of dealing with a claim other than cases where an order declaring land to be the property of the Crown with the special effect of section 2 (2) is provided for. The Settlement Officer can either admit the claim or enter into an agreement in writing with the claimant; the scope of this agreement is defined; it extends to the admission or rejection of the claim wholly or in part, or for the purchase of the whole or part of the subject of the claim. An order is then made which " shall embody such admission or agreement."

Sub-section (2) provides that the order published in the *Gazette* shall be " final and conclusive " and that the *Gazette* containing the order shall be " conclusive proof " of the admission or agreement. When there is a simple admission of a claim the ruling in *Kiri Menika et al. v. Appuhamy et al.* (*supra*) has no application and the claimant does not get absolute title by the order embodying the admission. *Gunasekera v. Silva et al.* (*supra*).

Is it possible then to import into the simple admission of claim in the order 6 D 5 the fact of the agreement and with it the radical difference in its effect following on the decision in *Kiri Menika et al. v. Appuhamy et al.* (*supra*) when the order contains no reference to the agreement? It appears to me impossible to do so if any effect is to be given to the words " final and conclusive " and " conclusive proof " in section 4 (2), and when the clear distinction which the section draws between an admission and an agreement is remembered. For this reason I am of opinion that the order 6 D 5 does not confer absolute title on the respondent.

If this is so, the later publication, 6 D 6, cannot affect that which 6 D 5 had already made final and conclusive, and apart from this, though 6 D 6 recites the agreement regarding 31 CH, the order or declaratory part of it has reference only to the lots declared to be the property of the Crown.

[1] *(1917) 4 C. W. R. 226.*

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Further, the lot 31CH is treated differently in the two publication; in 6 D 5 the Crown admits the title of the respondent; 6 D 6 recites an agreement that he should be declared the owner. Regarded as a mere admission of the claim of the respondent it is not easy to see how 6 D 5 can prejudicially affect the rights of those on whose behalf he avowedly claimed.

We have called for and examined the record of *Kiri Menika et al. v. Appuhamy et al.* (District Court, Kegalla, No. 3,892); in that case there was an agreement regarding two lots, 33 and 33A, by which in consideration of the claimant withdrawing other claims the Settlement Officer agreed to declare him the owner of lot 33 and to declare him the purchaser of lot 33A on payment by him of the price on an appointed day. The orders were published in the same issue of the *Gazette*, but separately; that regarding 33A was numbered 36; it recited the agreement to purchase, the payment of the price, and declared the claimant to be the purchaser; it contained no reference to lot 33. The order regarding lot 33 was numbered 37 and was a simple admission of the claim without any reference to the agreement. It was held that the claimant got absolute title to both lots; the difference in the terms of the orders and the question whether the order regarding 33 could be looked upon as made in pursuance of an agreement which was not stated in it were not considered.

The judgment appealed from is set aside, and the case remitted for trial on the footing that the order 6 D 5 does not confer absolute title on the respondent.

The respondent will pay the appellants their costs of the appeal and of the contest in the District Court.

Set aside.