

1941 Present : **Hearne, Keuneman, and Wijeyewardene JJ.**

RANMENIKA v. APPUHAMY

5—D. C. Kegalla, 743.

Registration—Divided portion of larger land—Registration in separate folio and reference to old folio—Proper description of divided portion with reference to boundaries—Registration of Documents Ordinance (Cap. 101), s. 15 (1) (b), Regulation 14.

A deed affecting the divided portion of a larger land must be registered in a separate folio and the new folio must be connected by means of cross-references with the folio in which the larger land has been registered.

The registration of a deed dealing with the divided portion of a larger land should contain an accurate statement of the boundaries of such divided portion.

The sanction of the Registrar-General under section 14 (5) of the Registration of Documents Ordinance could only have the effect of making an instrument registrable which would otherwise have been non-registrable. It does not affect the question whether the particular instrument is duly registered.

A PPEAL from a judgment of the District Judge of Kegalla. The appeal was referred to a Bench of three Judges. The facts appear from the argument and the judgment.

N. E. Weerasooria, K.C., (with him V. F. Gunaratne), for ninth defendant, appellant.—In consequence of the partition action, the old land ceased to be an entity and there came into being two lands one of which was lot 2. Lot 2, therefore, had to be registered in a new folio

with a full description of its boundaries and extent. See sections 15 (1) (b), 14 (1), 14 (2) of the Registration of Documents Ordinance (Cap. 101) and *Perera v. Soysa*¹. Deed 10 D 1 being not properly registered, our deed (9 D 1) has priority by reason of correct registration.

L. A. Rajapakse (with him *C. R. Gunaratne*, *P. A. Senaratne* and *R. N. Illangakoon*), for tenth defendant, respondent.—Deed 10 D 1 was duly registered. Section 15 of Cap. 101 deals with the registration of two classes of land—one a new land, under section 15 (1) (b), and the other, under section 15 (1) (a). Section 15 (1) (a) deals with a case like the present one. To get the benefit of due registration there should be a cross-reference to the old parent land. That is the effect of the word “affecting” in section 15 (1) (a).

A partition decree creates merely new title and does not bring into existence new lands. That this is the correct view is supported by the fact that a partition decree would not wipe out a *fidei commissum*. Section 15 (1) (a) is supplemented by Regulation 14 (Vol. I. of Subsidiary Legislation, p. 547) and is fully considered in *C. R. Point Pedro*, 28,638 (S. C. No. 53)² where *Meurling v. Gimarahamy*³, and *Ramasamy Chetty v. Marikar*⁴ are discussed. See also *Mudalihamy v. Banda et al.*⁵; *Appuhamy v. Wirasinghe*⁶; and *Chelliah Pillai v. Devadasan et al.*⁷.

An infirmity of misdescription of boundaries is not a fatal irregularity. Section 14 of Cap. 101 corresponds to section 23 of the older Ordinance No. 14 of 1891, except for the addition of sub-section (5). Sub-section (2) of section 14 should be read in conjunction with sub-section (5) and Regulation 6.

N. E. Weerasocria, K.C., in reply.—The governing section in this case is section 15 (1) (b) and not section 15 (1) (a). Even if the latter is applicable, we have complied with its requirements.

The description of boundaries is vital for registration. Registration, to be correct, should obviate the necessity of looking into any deed. See *Jayawardene on Registration of Deeds*, p. 139, and the observations of Wood Renton A.C.J. in *Cornelis v. Abiasinghe*⁸.

Cur. adv. vult.

March 21, 1941, WIJEYEWARDENE J.—

The questions that have to be considered on this appeal arise under the Registration of Documents Ordinance (Legislative Enactments, Vol. III., Chapter 101).

A land called Moragahamulahenawatta of the extent of 3 acres 2 roods and 35 perches was partitioned in D. C. Kegalla, 8,570. Under the final decree entered in that case a defined portion—lot 2 in plan 3,294 made by K. H. Jansz, Licensed Surveyor, of the extent of 1 acre 3 roods and 17½ perches—was allotted to Dingiri Menika, Dingiri Mahatmaya and three others.

By deed 10 D 1 of July 16, 1931, Dingiri Menika and Dingiri Mahatmaya conveyed their undivided 2/5 shares to H. M. Tilekeratne who

¹ (1937) 39 N. L. R. 498

² S. C. Minutes of Sept. 20, 1940

³ (1922) 25 N. L. R. 500.

⁴ (1915) 18 N. L. R. 502.

⁵ (1922) 24 N. L. R. 274

⁶ (1922) 24 N. L. R. 283

⁷ (1937) 39 N. L. R. 68.

⁸ (1913) 5 Brl. Notes of Cases 30.

by deed 10 D 2 of March 17, 1933, conveyed the same to the tenth defendant-respondent. These deeds described the property conveyed as "an undivided 2/5th shares out of lot No. 2 of 1 acre 3 roods and 17½ perches in extent defined and depicted in a plan No. 3,294 made by K. H. Jansz, Licensed Surveyor, from and out of the land Moragahamullahenawatta of 3 acres 2 roods and 35 perches *which said whole land is bounded on the north*"

Subsequent to the execution of 10 D 1 Dingiri Menika executed deed 9 D 1 of December 22, 1931, conveying an undivided 1/5th share of lot 2 to R. Ukku Banda who died leaving as his heirs his children, the third, fourth, fifth, sixth and seventh defendants-appellants. This deed described the lot by reference to the plan made by K. H. Jansz and the decree in the partition case and gave the extent and boundaries of the divided lot.

The District Judge held that the tenth defendant respondent became entitled to Dingiri Menika's 1/5th share of lot 2 on the ground that the deed 10 D 1 was duly registered and was earlier in date of execution and date of registration to deed 9 D 1. The present appeal is preferred against that finding of the District Judge.

The case has been argued on the footing that the earliest deed registered in respect of the entire land is a deed registered in 1886 in F 2/172. The folio B 1/13 is a continuation of that folio.

The deed 10 D 1 was registered in B 116/240 in July 29, 1931. That folio gives the name of the land as Moragahamullehenawatta and the extent as 3 acres 2 roods and 35 perches and under the heading "Boundaries" gives the boundaries of the entire extent of 3 acres 2 roods and 35 perches. Under the heading, "Nature and Particulars of Alienations and Encumbrances" the registrar has given the following description in respect of the deed 10 D 1:—"Transfer of undivided 2/5th shares out of lot No. 2 of 1 acre 3 roods and 17½ perches in extent with the tiled house thereon of the above". The folios B 1/13 and B 116/240 are connected by cross-references made on November 3, 1932.

The deed 9 D 1 was registered on January 8, 1932, in B 117/297. That folio gives the name of the land as Moragahamullehenawatta lot 2 and the extent as 1 acre 3 roods 17½ perches. It further gives the boundaries of the divided lot 2. The two folios B 117/297 and B 116/240 are connected by cross-references made on August 19, 1936.

With this preliminary statement of facts I shall deal now with the main question of law arising in the case:—Is the deed 9 D 1 duly registered, and if so is it entitled to prevail over the deed 10 D 1?

The provisions of the law that have to be considered in this connection are sections 14 and 15 and some of the regulations made under section 49 (*vide* Subsidiary Legislation, Vol. I., Chap. 101).

It was argued by the Counsel for the appellant that a deed dealing with a divided lot falls under proviso (b) of section 15 (1) which deals with cases "where no instrument affecting the same land has been previously registered", on the ground that a divided lot and the entire corpus of which it is a portion could not be regarded as "the same land" within the meaning of section 15. A study of sections 14 and 15 and Regulation 14 has satisfied me that this contention is not sound.

If such an instrument comes under proviso (b) it is difficult to understand why the Legislature thought it necessary to provide again in Regulation 14 that "when an instrument affecting land relates to a divided portion—the registrar shall register the instrument in a separate folio". Regulation 14 provides further that the registrar shall connect the folio in which a divided lot is registered with the folio in which there is an earlier registration of a deed affecting the entire land. Now section 14 (7) shows how the registrar is to obtain the information with regard to earlier registrations. It provides that "any instrument (except a will) presented for registration (shall contain) a reference to the volume and folio in which some earlier instrument relating to the same land is registered if such reference is known to the notary". If a divided lot is not "the same land" as the larger land of which it is a part then section 14 does not apply to deeds dealing with divided lots and the registrar would not be able to make the cross-references required by Regulation 14. Such an interpretation of the words "the same land" would therefore tend to defeat the very object of registration.

I think that a deed dealing with a divided lot of a larger land falls under proviso (a) of section 15 (1) when there are earlier registrations affecting the larger land. That proviso enacts that a registrar receiving any deed falling under it could either register the deed "in, or in continuation of the folio" in which the earlier registration has been entered or in a new folio, "cross references being entered in the prescribed manner". But Regulation 14 lays down that a deed affecting a divided portion should be registered in "a separate folio connecting it with the entry relating to the whole area by cross-references". The joint effect of section 15 and Regulation 14 is, therefore, to require the registrar to register a deed affecting the divided lot in a separate folio and connect by means of cross-references the new folio and the folio in which there is an earlier registration with respect to the larger land.

The deed 9 D 1 has been entered in a new folio and it has been connected by cross-reference made on August 19, 1936, with the folio B 116/240 which is in turn connected with the folio B 1/13 a continuation of F 2/172. The registration has also been effected in accordance with section 16 and regulation 13. The deed 9 D 1 was therefore duly registered on August 19, 1936.

As stated earlier, the deed 10 D 1 has been registered in B 116/240 which is connected with the earlier folios. The question remains, however, to be considered whether this deed has been duly registered as required by section 16 and Regulation 13. Now Regulation 13 enacts that "the registration of an instrument affecting land shall be effected by entering the particulars required in Form B". That form B requires the boundaries and extent of the particular land to be given. The importance of these details in the system of registration established by the Ordinance is borne out by the fact that in section 14 (2) it is laid down in express terms that where the instrument (except a will) presented for registration deals with a divided portion "such portion shall be clearly and accurately defined by its particular boundaries and extent". But the folio D 116/240 gives only the boundaries and extent of the larger land of which lot 2 is a divided portion. There is no indication anywhere

in these particulars to show that folio B 116/240 dealt with transactions in respect of the divided lot. That folio may perhaps be regarded as a separate folio but it would still be a folio dealing with the larger land and not the divided portion. Anyone searching the registers for prior transactions in respect of lot 2 would not therefore scrutinize the transactions mentioned in that folio as he would naturally assume that they were in respect of the larger land. Moreover the information given with regard to 10 D 1 in that folio under the heading "Nature and Particulars of Alienations and Incumbrances" makes a mere mention of lot 2 without reference either to the plan made by K. H. Jansz or the decree in the partition case. I hold that the deed 10 D 1 is not duly registered, and is of no effect as against the deed 9 D 1.

I would now refer to certain other questions of law which were discussed at the argument before us. It was contended that a deed in respect of a defined lot need not "contain embodied therein or in a schedule annexed thereto" the extent and the boundaries of that lot in order to render the instrument registrable under section 14 (2) and that such description could be supplied to the registrar in some other way. This argument was founded on the fact that section 14 (2) unlike section 14 (1) and section 14 (3) did not state expressly that the description should be given in the body of the deed or in the schedule. But an examination of sub-sections (4) and (5) of section 14 shows that the description required by sub-section (2) should be given in the deed. Sub-section (4) creates an exception in the case of wills and provides that in these cases "a written description of the land" given to the registrar could be regarded as a sufficient compliance with the provisions of sub-sections (1), (2), and (3). Sub-section (5) indicates that under that section the Registrar-General has to be satisfied with "the description" given in the deed. He may of course ask for and obtain further information from the parties concerned in order to satisfy himself that the description given in the deed is sufficient. Moreover it is difficult to believe that the Legislature intended to create a distinction between a deed dealing with a divided lot of a larger land and deeds dealing with the larger land itself on an undivided share of the larger land.

The deed 10 D 1 which does not give the boundaries of the divided lot did not therefore comply with the provisions of section 14 (2). That could not however prevent the deed from being registered, as section 14 (5) enacts that a deed "which does not state the particulars required" could be registered with the sanction of the Registrar-General.

It is not necessary for the purpose of this appeal to decide the further questions whether it could be presumed in the absence of definite evidence that a certain registration has been effected with the sanction of the Registrar-General and if the validity of a registration sanctioned by the Registrar-General could be questioned in any action. Whatever may be the decision on these questions I hold that the sanction of the Registrar-General could only have the effect of making registrable an instrument which would otherwise have been non-registrable and that it cannot affect the question whether the particular instrument is duly registered.

I would allow the appeal and alter the interlocutory decree entered in the case by assigning to the tenth defendant only an undivided 1/5th share and to the third, fourth, fifth, sixth, and seventh defendants the 1/5th share claimed by them on 9 D 1.

The appellants will be entitled to the costs of the appeal and the costs of the contest in the Court below.

HEARNE J.—I agree.

KEUNEMAN J.—I agree.

Appeal allowed.

