

Present: Dalton and Driberg JJ.

GOVERNMENT AGENT, SABARAGAMUWA, v.
ASIRWATHAM *et al.*

27—D. C. (Inty.) Ratnapura, 4,355

Land acquisition—Reference to Court—Sale of property—Right of intervention—Claim to compensation—Civil Procedure Code, s. 18.

Where property, which was the subject of a reference to Court under the Land Acquisition Ordinance, was transferred by deed which conveyed, *inter alia*, the right to intervene in cases instituted by the Crown in respect of the property.—

Held, that the vendee was entitled to intervene in the reference proceedings and claim and compensation.

Held, further, that in such proceedings the inquiry is not restricted to those persons only who are named in the libel of reference.

Held also, that where there is no dispute with the Crown, the Government Agent should neither pay nor receive the costs of reference.

*Green v. Romanis Appu et al.*¹ followed.

A PPEAL from an order of the District Judge of Ratnapura.

Soertsz (with *R. C. Fonseka*), for 1st defendant, appellant.

N. E. Weerasooriya, for 7th defendant, respondent.

April 4, 1928. DALTON J.—

This appeal arises out of a reference to the Court under the provisions of the Land Acquisition Ordinance, 1876. No dispute arises as to the amount of the compensation payable for the land acquired, the sum of Rs. 2,965 having been deposited by the Government Agent in respect of that compensation. The dispute is as to the rights of certain parties to the amount so deposited. That dispute has now been narrowed down to one between the 1st and 7th defendants.

As I regret to say is not uncommon, the facts have not been fully elucidated in the lower Court. What is the date of the libel of reference does not appear, but the answer of the 1st defendant is dated March 4, 1926. In his answer he claimed the whole of the compensation, but subsequently he admitted the claims of the 2nd and 5th defendants to a proportion of the sum in respect of 1½ acres of the land acquired. We are then told that, thereafter, the Crown entered into possession, but what is the date of the certificate upon

¹ 5 S. C. C. 1.

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the signing of which the land vested in the Crown has nowhere been ascertained or disclosed (*vide* section 12 of Ordinance No. 3 of 1876). It is difficult to understand that omission in view of the legal argument submitted in the lower Court, which depended upon the ascertainment of the date of that vesting. It seems to have been assumed, as Counsel for appellant has stated, that the property vested in the Crown so soon as these proceedings were commenced, which of course is not correct. It has, however, been assumed that the property vested in the Crown prior to March 7, 1927. It was on that date that certain persons executed a deed in favour of Punchimahatmaya (who subsequently intervened and became the 7th defendant), purporting to convey to him, for the sum of Rs. 50, all the right, title, and interest of the vendors in and to an undivided half of the land which was the subject of the acquisition. They had made no claim to the land or to the sum deposited in Court, but in the same deed they purported to make over to Punchimahatmaya "the right to intervene in cases now instituted by the Crown in respect of the said property." Six months later, on October 17, a petition was filed on behalf of Punchimahatmaya and the Court was moved to allow him to intervene in the action to prove his claim to a half share of the compensation deposited. He also asked that his petition be taken as his statement of claim. All the parties received notice of this motion and a copy of the petition. and, no objection being offered to the motion, the trial Judge allowed it. After intervenient's proctor had filed a list of his witnesses on October 25, the matter came before the Court on November 3. Issues were then framed as follows:—

- (1) Does the deed on which the 7th defendant claims convey any title to him by reason of the fact that it was executed after the land was acquired by the Crown?
- (2) Even if the Court holds that he has a valid transfer, can he claim anything more than Rs. 50, which is the consideration stated upon that deed?
- (3) Prescriptive rights.
- (4) Are the seven defendants the grandchildren of Butanaralage Mudianse?

It will be seen that no question was raised as to the right of the 7th defendant or intervenient to intervene at the stage of the proceedings at which he came in.

On the issues the trial Judge found that it has been satisfactorily established that the vendors to the 7th defendant were co-owners of the predecessors in title of the 1st defendant. On appeal that finding is not questioned. The trial Judge, in accordance with that finding, directed that the amount of compensation deposited, after allowing for the deduction therefrom in respect of the 2nd and 5th defendants

to which I have already referred, be divided in equal shares between the 1st and 7th defendants, each of them on that basis receiving the sum of Rs. 882.50, less Crown costs which the trial Judge has ordered to be deducted from the amount in Court. From that decision the 1st defendant appeals.

No question is raised on the appeal in respect of the 2nd, 3rd, or 4th issues. The grounds upon which it is urged that the trial Judge was wrong are, first, that the 7th defendant's alleged purchase was long after the land had been acquired by the Crown and that his deed gave him no title or interest in the land whatsoever; secondly, that he ought not to have been allowed to intervene, and he has not been made a party in terms of section 18 of the Civil Procedure Code; and thirdly, that the trial Judge could, under the provisions of the Land Acquisition Ordinance, inquire into those cases only which were referred to by the Government Agent in his libel.

On the first point, although, as I have stated, we have no information as to the date of the vesting of the land in the Crown, it has been assumed that 7th defendant's purchase was subsequent to that date. An examination of the deed (7 D2) has led me to the conclusion to which the trial Judge has come, which is, that its substantial effect is to place the 7th defendant in the position to which his vendors were entitled. It refers to the acquisition proceedings, and its effect is to convey to the 7th defendant such interests (if any) which the vendors had in the compensation deposited in Court by the Crown. It is true it appears to have been an entirely speculative purchase on his part, but that is no ground, if the vendors had an interest, why the 7th defendant should not have the benefit of his purchase.

On the second point I am unable to agree with Mr. Soertsz's argument that no person can intervene in proceedings under this Ordinance, and that the inquiry must be restricted to those persons only who are referred to in the libel of reference. Mr. Soertsz agrees that if the sum claimed by the 1st defendant had been paid out to him, the 7th defendant could thereafter, under the provisions of section 36 of the Ordinance, recover from him any part of the sum to which he (the 7th defendant) might be entitled. Why, therefore, he should not be entitled to put forward his claim whilst the money is still in Court, and before it reaches the 1st defendant's hands, it is difficult to understand. The 7th defendant has been properly joined as a party, under the provisions of section 32 of the Ordinance, after notice to all the other parties, including the 1st defendant. No objection was put forward. The order of the trial Judge allowing the application falls within the provisions of section 18 of the Civil Procedure Code. No attempt to have his name

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struck out, as improperly joined, has been made. In the case of *Templer v. Seneviratne*¹ the facts are different. There the trial Judge entered upon a roving inquiry as to the rights of a great many people who were not parties on the record, and who had never made any claim either before the Government Agent or the District Judge. His decision was therefore set aside and the case remitted for the purpose of his adjudicating on the claims of the four persons named in the libel of reference. It is clear, however, from the judgment of Withers J. that he contemplated the possibility of intervenients putting forward claims and being heard if they were properly joined. He points out that according to section 32 of the Ordinance the proceedings of the District Court shall be subject to the prevailing rules of practice and procedure, and that by that procedure no person could intervene in any action otherwise than as provided by section 18 of the Civil Procedure Code. That such intervention in proceedings as we have here under the Land Acquisition Ordinance is lawful, I am fully satisfied. This meets also the third ground of appeal. I can find nothing in the provisions of section 13 of the Ordinance opposed to this conclusion. If the claim is put forward after the land is vested in the Crown, it seems to me a highly technical point, using possibly a more euphonious term than the circumstances justify, to say that the claimant has no "interest" in the land. It cannot be said, however, that he is not "interested" in the land, within what seems to me to be the purview of the section. He is interested to the extent of his interest in the compensation which, on the vesting of the rights of himself or his predecessors in title in the land in the Crown, takes the place of or is substituted for his interest in the land.

With regard to the assignments of rights in a pending action, it is not contested that, after *litis contestatio*, such assignment is not unlawful. Here the vendors were not even parties to the action and their interests are clearly assignable.

For the above reasons I am of opinion that the decision of the trial Judge was correct, and I would dismiss this appeal with costs.

One further matter remains for mention. The trial Judge directed that Crown costs be first deducted from the sum in deposit. That will probably mean a substantial reduction in the amount received by the successful claimants. The trial Judge appears to have overlooked the fact that the Crown Proctor expressly informed the Court that there was no dispute with the Crown. In that case the Crown or Government Agent should neither pay nor receive costs of the reference (see *Green v. Romanis Appu*²). No question on this point has, however, been raised on the appeal, and the

¹ 2 C. L. R. 70.² 5 S. C. C. 1.

Government Agent is not made a party to the appeal. We cannot, therefore, make any order in respect of these costs. We would, however, express the opinion that, unless there are any circumstances justifying the order to which our attention has not been drawn, in view of what we state, the order of the trial Judge in respect of Crown costs should be waived by the Crown, no such deduction being apparently justifiable.

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DRIEBERG J.—I agree.

Appeal dismissed.

