

1914.

CHENA MUHANDIRAM v. BANDA.

423—P. C. Anuradhapura, 40,457.

June 6, 1914. LASCELLES C.J.—

This is one of a group of four cases in the Police Court of Anuradhapura, in which villagers appeal from convictions under the Forest Ordinance for illegally clearing land for chena cultivation at different places within the Kiralawa korale.

As the defence is the same in all four cases, I deal with the questions involved in the present appeal, as the nature of the defence is more fully developed in this case than in the others.

The defendants claim to be entitled to the lands in question on a talipot founded on a document known as "the Kiralawa sannas." The talipot bears date 1543, according to one of the translations (or, according to another translation, 1620), of the Saka era, and was registered in 1873. It purports to be a grant by Gomara Mudiyanse to Wahala Madurale of all the lands within certain specified boundaries. The appellants claim descent from the original grantee. It is admitted that the defence is *bona fide*, that the lands in question are within the boundaries named in the talipot, and that the appellant in the present case and his ancestors have claimed the land for a long time.

In cases of this nature I am very strongly of opinion that the questions at issue between the Crown and the claimant can only be satisfactorily disposed of either by civil action or by proceedings under the Waste Lands Ordinance. The latter form of proceedings is preferable, as it is generally found possible to arrive at a settlement which is accepted as equitable by the claimants themselves.

It is true that in prosecutions under the Forest Ordinance the Magistrate has jurisdiction, under section 4 of the Ordinance, to adjudicate on questions of title arising in the course of the proceedings. There are many cases where this power may be exercised properly and without injustice to those concerned. But it was never intended that this procedure should be resorted to as a short cut to get rid of claims like that involved in the present case. The case is one where there is a *bona fide* claim to a village under an ancient grant said to be based on a sannas. I can imagine nothing more unfair than that such a claim should be met by prosecuting the claimants summarily one by one in the Police Court.

But apart from its essential unfairness, this procedure is, and must be, futile. The questions involved in claims like these are far too intricate to be disposed of by the summary procedure of a Police Court.

The present case is an illustration of the result of attempting to dispose of complicated claims in a Police Court.

The root of the claim appears to me the Kiralawa sannas. The Magistrate gets rid of this document in a very summary fashion. "This sannas," he states in his judgment, "has since been condemned as a forgery." For augh

I know this may be the case. But there is no evidence whatever to justify such a pronouncement. The sannas was not produced in Court, and no evidence was given as to its genuineness. The only foundation for the Magistrate's condemnation of the sannas is a statement by the Korala that the sannas was declared a forgery "in this Court," meaning, I suppose, the Police Court of Anuradhapura. Thus, purely on hearsay evidence, and without any investigation at all, the sannas is ruled out of the question.

Another instance may be given of the essential unfairness of the procedure adopted in these cases. In appeal No. 421 one of the accused stated that he has been prosecuted and acquitted of a similar offence in P. C. No. 24,772. If this plea had been put forward in a civil case it would have been fully investigated. But here it appears to have received no attention. Yet what the accused said was substantially true. He was charged with a similar offence; he pleaded the same defence, namely, that he was entitled to the land under the talipot; the case was postponed to await the result of an appeal to the Supreme Court in another case (No. 27,957). When the conviction in that case was set aside by the Supreme Court, the following journal entry appears: "Vide letter No. 1,440 of 18/5/01 received from Government Agent and filed and recorded in P. C. 27,957. Case to be dropped pending settlement of the genuineness of the sannas referred to in 27,957 in civil proceedings."

But it appears from the letter of the Government Agent that, besides case No. 27,957, 172 other cases were dropped pending the settlement of the genuineness of the sannas in civil proceedings.

This circumstance, which can hardly have been overlooked, should have been brought to the notice of the Magistrate. His decision would probably have been otherwise had he been aware that the procedure now adopted had been abandoned in 1901 in consequence of an adverse decision of the Supreme Court.

It is clear to me that the issues involved in the defence *bona fide* set up by the accused have not been properly tried, and on this account I set the conviction aside.

Set aside.

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*O'Connell
Muhandiram
v. Banda*