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Present : Porter and Schneider JJ.

MUDALIHAMY v. BANDA *et al.*

225—D. C. Kegalla, 5,790

Registration—Wrong folio—Side entry referring to wrong folio.

The deed relied on by plaintiff dated May 14, 1905, was registered on October 27, 1920, in A/45, folio 236, which was connected by a reference to A/2, folio 358, which was the right folio. The deed relied on by defendant dated November 3, 1919, was registered on November 21, 1919, in A/96, folio 100. There was an entry in red ink at the top of the folio "for a similar land, see A/45/236, and in A/45/236 there was an entry for a similar land, see A/96/100."

Held, that defendants' deed was duly registered.

"These references establish a connection between the volumes and folios in which the two competing deeds are registered sufficient to facilitate reference to all existing alienations affecting the land."

THE plaintiff in this case sued the defendant for declaration of title to six lahas of a field called Kathtotewela Galahitiyawe. The plaintiff based his claim on deed No. 52 (P 1) executed by Dingiri Menika, who was, admittedly, the original owner of the field in dispute.

The fourth defendant claimed the land in dispute, also on a deed executed from the same Dingiri Menika.

Plaintiff's deed P 1 was registered on October 27, 1920, in folio A 45/236. The folio A 45/236 was connected with A 11/358, which was, admittedly, the folio in which the earliest transaction was registered.

Defendants' deed D 2 was registered on November 21, 1919, in folio A 96/100. In folio A 96/100 there is an entry "for a similar land, see A 45/236," and in folio A 45/236 there is a corresponding entry "for a similar land, see A 96/100." In these circumstances the appellants argued that there was sufficient connection between the folios A 96/100 and A 45/236, and the folio A 45/236 being admittedly connected with A 11/358, and D 2 having been registered before plaintiff's deed, the defendants' title was superior by reason of prior and due registration.

The learned District Judge (V. P. Redlich, Esq.) delivered the following judgment in plaintiff's favour :—

In this case the title to a land is in dispute on account of the two deeds. One was deed No. 1,509 of November 3, 1919 (D 2) registered on November 21, 1919, in folio A 96/100, and the other deed No. 52 of May 14, 1905, registered on October 27, 1920, P 1. The issue agreed on then was: "Does deed No. 1,509 prevail over deed No. 52 by reason of prior registration?"

It was admitted that the earliest registration in respect of this land was in folio A 11358; there is from that folio a regular succession of registrations leading up to deed P 1, so that P 1 is duly connected with the earliest registration.

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In regard to D 2 it is registered in folio A 96/100, which is not a folio in the regular succession above referred to; it is also to be noted that this folio A 96/100 was opened on November 21, 1919, before the space in the folio A 45/236, P 3, a folio in the regular succession, was exhausted. The defendant, however, depended on a side entry in folio A 45/236 "for a similar land, see A 96/100," and a corresponding side entry in 96/100 "for a similar land, see A 45/236," and Mr. Molamure for him argued that by means of these side entries his deed was duly connected up with the regular succession leading back to the earliest Registration. Mr. Gurusamy, for plaintiff, argued *contra*. In the absence of any authority on the point, I am not prepared to hold that such a side entry has the value attached to it, which Mr. Molamure sought to give it. It seems to me that, if accepted as such, it would open the door to much fraud. In these circumstances I answer the issue in plaintiff's favour.

Enter judgment for plaintiff as prayed for, with costs, and damages, Rs. 10, as agreed on.

H. J. C. Pereira, K.C. (with him *R. C. Fonseka*), for defendants, appellants.

No appearance for the plaintiff, respondent.

October 27, 1922. PORTER J.—

The judgment in this case depends entirely upon the priority of two deeds. One was deed No. 1,509 of November 5, 1919 (D 2), registered on November 21, 1919, in folio A 96/100, and the other deed No. 52 of June 14, 1905, and registered on October 27, 1920 (P 1).

The sole issue is : Does deed No. 1,509 prevail over deed No. 52 by reason of prior registration ?

It is admitted that the earliest registration of a deed in respect of this land was in folio A 11/358, and there is a regular succession of registrations in that folio leading up to the deed P 1.

The deed D 2 is registered in folio A 96/100, which was opened on November 21, 1919, before the space in folio A 45/236 (P 3), a folio in the regular succession, was filled up.

The defendant relies on a side entry in red ink in folio A 45/236 to the following effect : " For a similar land, see A 96/100 " and a corresponding side entry in 96/100, " for a similar land, see A 45/236. " From this he maintains that by means of those side entries his deed was duly connected up with the regular succession leading back to the earliest registration.

Wood Renton C.J. in *Cornelis v. Abeysinhe*¹ makes the following interesting observations : " Section 17 of the Land Registration

¹ 5 *Bal. N. C.* 30.

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Ordinance, 1891, confers a privilege upon the grantees of deeds affecting land. It is quite reasonable that they should be required to see that their deeds are registered in accordance with the requirements of the law, so 'as to facilitate reference' in the language of section 15 (1) of the Ordinance itself 'to all existing alienations or encumbrances affecting' the same lands. It may be well to add, however, that the decisions in question have turned on the presence of negligence of some kind or other on the part of the applicant for registration. The Supreme Court has not yet, I think, held that an applicant for registration would be deprived of his priority by the sole and gratuitous fault or mistake of the registering officer."

The side entries in folio 45/236 and folio 96/100 would, on a proper search, have disclosed to the plaintiff the prior registration of D 2. It may be that the writing of the side entries by the registering officer was not a usual method of registering, but, at most, it would be a sole and gratuitous fault or mistake of the registering officer. But as I am of the opinion that the two side entries provide a sufficient connecting link between the volumes and folios in which the two competing deeds are registered "to facilitate reference to all existing alienations or encumbrances affecting" the land in claim within sections 15 and 16 of the Land Registration Ordinance of 1891.

I would allow the appeal with costs, and set aside the decree of the District Court, and dismiss plaintiff's action, with costs.

SCHNEIDER J.—

This appeal which appeared at first to raise an important question regarding the law of the registration of deeds, eventually resolved itself into a simple question of fact.

The deed relied on by the plaintiff is marked P 1, is dated May 14, 1905, and was registered on October 27, 1920, in Division A, volume 45, and folio 236. This folio is connected by a reference with Division A, volume II., and folio 358. There is no question that the deed has been registered in the right book.

The deed relied on by the defendants is marked D 2, is dated November 3, 1919, and was registered on November 21, 1919. This deed is registered in Division A, volume 96, folio 100. The column "Brought forward from vol. —, folio —," is blank, but there is a prominent entry in red ink at the top of the folio "for a similar land, see A 45/236." There is no evidence when this entry was made, but it may fairly be presumed that it was done in the ordinary course of business when the defendants' deed was registered on November 21, 1919. Then at A 45/236 there is the connecting reference "for a similar land, see A 96/100."

These references, in my opinion, establish a connection between the volumes and folios in which the two competing deeds are

registered sufficient " to facilitate reference to all existing alienations or encumbrances affecting " the land in claim within the meaning of sections 15 and 16 of " The Land Registration Ordinance, 1891."

I am unable to understand why the Registrar had not registered the defendants' deed in the same volume and folio in which he had registered the plaintiff's deed. The name of the land, the boundaries, and other particulars are identical.

As the defendants' deed has been " duly registered " and is prior in date of registration, it prevails against the plaintiff's deed.

I allow the appeal with costs, set aside the decree of the District Court, and dismissed the plaintiff's action, with costs.

Appeal allowed.

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