

Present : De Sampayo and Schneider JJ.

1922.

APPUHAMY *v.* WIRASINGHE.

272—D. C. Tangalla, 1,880.

Registration—Right folio—Entry in folio “ for similar land, see A 51/126.”

The foundation of defendant's deed D 1 was D. This latter deed (D) was registered in A vol. 24, folio 108. An entry at the foot of the folio stated that the registration was carried over to A 51/126, from which, again, by a similar entry, it was carried over to A 141/312. On the last folio there was no entry indicating any carrying forward. D 1 was registered in A 130/87, as D. 2, which was a mortgage granted by the transferor in D 1, was registered there; this mortgage was discharged at the execution of D 1. On A 130/87, the words “ brought forward from ” were crossed over, and in red ink there were inserted the words “ for the same land see A 101/114, ” and another entry “ for a similar land see A 51/126. ” On A 101/114 was registered a mortgage of the land, and against it in the “ remarks ” column were the words “ see A 24/108, where the title deed has been registered. ” At the bottom of the folio it was stated “ for the same land see A 130/87 and 101/114. ”

Held, that D 1 was registered in the right folio.

¹ (1899) 4 N. L. R. 285.

THE facts appear from the judgment.

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Samarawickreme, for second defendant, appellant.

E. W. Jayawardene, for plaintiff, respondent.

Cur. adv. vult.

February 24, 1922. SCHNEIDER J.—

The only question arising on this appeal is whether deed No. 1,277 (D 1), upon which the appellant claims title and which is registered in A vol. 130, folio 87, is registered in the right folio, so that it acquires priority by virtue of that registration.

Admittedly, the original registration of certain deeds dealing with the land commences in A vol. 24, folio 108. An entry at the foot of this folio states that the registration had been carried over to A vol. 51, folio 126, from which, again by a similar entry, it is carried over to A vol. 141, folio 312. On this last folio there is no entry indicating any carrying forward. But those registrations are connected by certain cross-references, which I shall describe presently with A vol. 130, folio 87. Upon an examination of the particulars given on the deeds in these later registrations, the reason is to be found why they are not connected with the earlier registrations by an entry indicating a continuation of the one set of registrations with the other. In the latter set of deeds there is a variation in the extent, and also in the description of one or other of the boundaries. The extent is larger. The Registrar of Lands, in whose office these registrations had been made, was called at the instance of the District Judge, and gave evidence. He spoke of the registrations in volumes 101 and 130 as "new registrations." The references in these volumes to the earlier set of registrations, he stated, had been made because a similarity in the lands had been noticed at the office and because the lands were not identical. The object of the references was, he said, to help searchers by giving as full information as possible. Upon these facts the learned District Judge held that the appellant's deed was not registered in the right folio, and dismissed his claim.

I do not agree with the learned District Judge. This case is entirely governed by the reasoning in *Ramasamy Chetty v. Marikkar*¹ which was cited to him. In that case this Court held that where a difference of folio in the registration was due to an alteration in the description of the land as the result of its partition, as regards the effect of registration, the requirements of the Ordinance had been satisfied, inasmuch as the later folio contained such reference as was necessary to identify the land with the original registration. It appears to me that the references in the two sets of registrations in this case are ample to show their connection. In A vol. 24, folio 108, is registered deed No. 9,440 (D), which

¹ (1915) 18 N. L. R. 503.

is the foundation of the title of the transferor in deed No. 1,277 (D 1). In D 1 it is expressly set out that the title is derived by (D). The boundaries are identical. The prior registration stated in deed D 1 is "A vol. 180, folio 87." The reason for this appears to have been that deed D 2, a mortgage granted by the transferor in D 1, is registered there, and this mortgage was discharged at the execution of D 1. On this folio there are two references to previous registration. At the place where the reference to the previous registration would be inserted ordinarily, the printed words "brought forward from" are crossed over, and in red ink there are inserted the words "for the same land see A vol. 101, folio 114." The other reference is near this, and is "for a similar land see A 51/126."

In vol. 101, folio 114, is registered a mortgage, and against it in the "remarks" column are the words "see A 24/108, where the title deed has been registered." At the bottom of the folio, the printed column giving particulars of the carrying forward of the registration is left blank, but over it is inserted "for the same land see A 130/87" and "see A 101/114" in two places.

These references conduct the searcher from the one set of the registrations to the other, whether he begins with the one set or with the other, and also establish the identity of the land. What better information can be wanted than are given in these references? In its own language what the Ordinance requires is that every deed relating to lands should be registered "so as to facilitate reference to all existing alienations or incumbrances affecting the same land."

I would, therefore, hold that D 1 has been registered in the right folio, and that the plaintiff is not entitled to a mortgage decree in respect of the land claimed by the appellant. So much of the decree as directs the land to be sold is set aside. The appellant will have his costs of this appeal and of the lower Court paid by the plaintiff.

I wish to add that I notice from the Judge's notes that the argument in the lower Court proceeded upon the assumption that the Land Registration Ordinance, 1907, No. 3 of 1907, was in force. This is not correct. That Ordinance has not been proclaimed up to date, and has therefore not come into operation.

DE SAMPAYO J.—Agreed.

Set aside.

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