1930.

Present: Fisher C.J. and Drieberg J.

SAMICHIAPPU *v.* DON SWÀRIS APPUHAMY.

326—D. C. Anuradhapura, 1,341.

Registration—Transfer of divided allotment—Extent annd boundaries—Sufficient description—Ordinance No. 14 of 1891, s. 23.

Where the transfer of the divided allotment of a land was registered and the allotment was defined by reference to its particular boundaries and extent and a description of the entire land,—

Held, that the property dealt with by the deed had been sufficiently described to satisfy the requirements of section 23 of the Land Registration Ordinance.

THIS was an action for declaration of title to certain allotments of a land called Tammanakelle which was owned by one William Alwis. The plaintiff claimed title on deeds P 2, P 3, P 14, which the defendants contended were not registered in the proper folio. The defendants, who based their title on a deed No. 10,240 (D1) from the heirs of William Alwis, claimed that the land was described for the first time in their deed with reference to the entire extent and the boundaries of the whole land and that there was not a sufficient description of the land in the earlier registration of P 2 and P 3. The learned District Judge held that the plaintiff's deeds dealt with undivided shares and that their proper remedy was a partition action.

H. V. Perera (with *Thiagaragah*), for plaintiff, appellant.—William Alwis, the original owner, held the land in question in two divided portions. The western portion consisted of 4 acres and the eastern of 6 acres. Between these two portions was an extent of 2 acres belonging to Charles.

The appellants have acquired title to the western 4 acres by P 2, P 3, and P 14. The boundaries in each allotment have been specifically stated. P 2, P 3, and P 14 have been registered in folios A 21/141, A 21/142, A 21/143, respectively. The Crown grant was not registered and there was no registration of this land prior to P 2, P 3, and P 14. A 21/141, A 21/142, A 21/143 were the proper folios for the registration of this land.

With regard to the eastern portion, the appellant claims title by P 7 and P11. P11 is of prior registration and is registered in the folio (A 37/173) in which the respondent's deeds are registered. P 7 is also of prior registration and is registered in folio A 28/187 which is connected with A 37/173. The appellant has therefore better title to the eastern portion than the respondent.

Weerasooria, for defendant, respondent.—The appellant is at the most only a co-owner and his proper remedy is to institute a suit for partition. P 2, P 3, and P 14 give the appellant only certain undivided interests. The proper folio for the registration of these deeds was A 37/173 and the respondent's deeds gain priority. The appellant can claim title only by P 11. The land was never divided by possession. The appellant is only a co-owner.

H. V. Perera, in reply.

April 2, 1930. DRIEBERG J.—

On October 26, 1908, William Alwis executed three deeds bearing consecutive numbers. By deed No. 4,209 (P 2) he sold an extent of about 1 acre on the extreme west to Amoris, describing the eastern boundary as the land which was being sold to Kuda Ettana; the transfer No. 4,210 (P 3) to Kuda Ettana was described as of "a block of 1 acre situated in the centre of the western portion belonging to me"; the 1 acre is described as bounded on the west by the portion being sold to Amoris Appu and on the east by the portion of land being sold to Chelliah. The deed in favour of Chelliah, No. 4,211 (P 14), is for an extent of 2 acres and is described as bounded on the west by the land "being sold to Kuda Ettana" and on the east by a "portion of this very land owned by Charles Appu."

The northern and the southern boundaries are the same in these and all other deeds for this land, viz., Crown land and reservation for a road.

The deeds P 2, P 3, and P 14 were attested by the same notary, Mr. Rajapakse, who made a note of these deeds on the Crown grant (P 1).

It is important to note that in the transfer by P 3 of the 1 acre lying between the 1 acre sold to Amoris and the 2 acres given to Chelliah, William Alwis described it as situated in the centre of the western portion belonging to him.

What were the western and the eastern portions, and what were their extents?

It is quite clear that William Alwis did not then regard himself as owing the entire extent of 12 acres and 16 perches, but that it then consisted of the western portion of 4 acres disposed of by P 2, P 3, and P 14, and of an eastern portion of 6 acres and 16 perches.

1930.

DRIEBERG J.

Samichiappu v. Don Swaris Appuhamy

and that between the two was a block of 2 acres belonging to Charles Appu, which is also referred to in later deeds as the land of Tennekoon.

The Crown grant (P 1) of January 18, 1907, was in favour of William Alwis and Dehanayakege Charles Appu. In his plaint the appellant alleged that William Alwis owned 10 acres and 16 perches and Charles Appu 2 acres. In his answer the respondent said that though the grant was in their names he was the real purchaser.

It is not possible, however, for the respondent, in view of the recital by William Alwis on P 14, to assert that the eastern boundary of the 4 acres on the west covered by P 2, P 3, and P 14 was his eastern portion and not the land of Charles Appu.

Further dealings by William Alwis put this beyond doubt. By deed No. 501 (P 7) of April 10, 1913, he sold to Palis Appuhamy an undivided 2 acres on the west of an extent of 6 acres and 16 perches of this land, bounded on the west by the land of Tennekoon and on the east by the land of the vendor. The 6 acres and 16 perches represented the extent of the eastern portion left to him after excluding the 4 acres sold on P 2, P 3, and P 14 and the 2 acres owned by Charles Appu.

On the same day, by deed No. 502 (P 9) of April 10, 1913, he sold to Leisahamy an undivided extent of 2 acres out of the same extent of 6 acres and 16 perches. He described it as being in the middle of this portion.

The 2 acres which were sold to Palis have passed to the appellant.

By deed No. 848 (P 10) of June 29, 1916, William Alwis bought back 2 acres from Leisahamy, and was thus entitled to 4 acres and 16 perches out of the eastern 6 acres and 16 perches, while the appellant owned the balance 2 acres.

By deed No. 1,872 (P 11) of June 6, 1918, William Alwis sold this extent of 4 acres and 16 perches to Podi Nona, whose daughter, Leisahamy, sold it by deed No. 898 (P 12) of February 28, 1928, to the appellant.

Argument was addressed to us on the effect of the description of the interests in P 7 and P 11 as an undivided 2 acres and 4 acres and 16 perches, respectively. But no question of undivided ownership arises between the appellant and the respondent for the reason that the appellant is the sole owner of this eastern lot of 6 acres and 16 perches. The appellant claims this whole lot as lots 2 and 3 in the schedule.

The respondent's claim is one on a title derived from the widow and some of the children of William Alwis. He admits, however, that the 4 acres and 16 perches which passed under P 11 did not form part of his estate and he asks to be declared owner of five-eight of the rest of the land. He concedes this extent of 4 acres and 16 perches to the appellant because he is obliged to. P 11

is registered in the same folio as his own deeds, which he claims are duly registered, and, further, by deed No. 43 of May 3, 1927, Loku Menika took a lease for five years from Leisahamy of this extent. He says he possesses under this lease.

No evidence was led in the case. The respondent contended that the appellant's deeds gave the latter only undivided interests and that his proper remedy was a partition action, and, further, that the deed in his, the respondent's, favour by the heirs of William Alwis, though later in date, took priority over P 2, P 3, and P 14 by registration.

As regards the first point, I have pointed out that it is quite clear on the deeds by William Alwis that in 1908 he owned this land in two distinct portions, a western one of 4 acres and an eastern one of 6 acres and 16 perches, and that between them was the 2-acre block belonging to Charles. William Alwis divested himself of all rights in the western block of 4 acres, 2 acres on the extreme west of which have passed to the appellant and form the first land in the schedule to the plaint, and 2 acres to Chelliah. If the respondent's deed does not get priority over P 2, P 3, and P 14 by registration then he has no interest in those 4 acres; if it does get priority, then the appellant has no interest in them. In either case no question of co-ownership in this portion can arise between the appellant and the respondent.

The earliest deeds relating to this land were P 2, P 3, and P 14, all of which were dated October 26, 1928, and registered on the same day, April 1, 1909, in three connected folios, A 21/141, A 21/142, and A 21/143, the subject of each deed being distinct though having a connection as part of the same land.

When occasion first arose for dealing with the divided eastern extent by deeds Nos. 501 and 502 of April 10, 1913, a new folio (A 28/187) was opened for this as for a distinct land. The land was described as being in extent 6 acres and 16 perches and bounded on the east by the land of the vendor, William Alwis, which was stated in the argument to be a land to the east of the entire block of 12 acres and 16 perches which had been bought from the Crown by William Alwis on the Crown grant P 16. The western boundary was given as the land of Wijekoon. Both these deeds were registered on May 16, 1913, in folio 28/187.

Mr. Kristnaratna, who attested the Deeds Nos. 501 and 502, had the Crown grant (P 1) before him, for he noted on it over his signature the number and date of these deeds, and the land is described in this folio as a part of Tamanawakelle No. 2209/6706, these being the preliminary and title plan numbers of this lot, thus fixing its identity as the subject of a Crown grant.

1930.

DRIEBERG J.

Samichiappu v. Don Swaris Appuhamy

Apparently both Mr. Rajapakse and Mr. Kristnaratna thought the western and eastern lots should be treated as distinct lands and neither of them thought it necessary to register the Crown grant. This should have been done, and it is to be regretted that it is sought to take advantage of this omission.

The deed to the respondent by the heirs of William Alwis (D 1) bears No. 10,240 of August 1, 1920, and was registered in folio A 37/173 on September 9, 1920. It was here that for the first time the land was described both by its Government plan numbers and with mention of its entire extent of 12 acres and 16 perches and boundaries of the whole land.

The first deed to be registered in this folio was P 11. The respondent claims that this is the first folio in which a deed relating to this land was duly registered for the reason that there was not a sufficient description of the entire land in the earlier registration of P 2 and P 3.

We were given to understand that A 37/173 was a new folio, and that of the extent of 6 acres and 16 perches the appellant could claim due registration for P 11 only; but this is not so, for A 37/173 is connected with A 34/386, which is an extension of A 28/187, in which P 7 is registered. If, therefore, A 37/173 is the correct folio, the appellant has superior title to the whole of the eastern portion.

The only ground on which the due registration of P 2 and P 3 is attacked is that it does not state the boundaries of the entire land. It does, however, mention the preliminary and title plan numbers of it. In the deed to the respondent the heirs of William Alwis set out his title on the Crown grant. If the respondent had looked at the personal and local index he would have seen the reference to the folios A 21/141 and A 21/142 showing dealings by Alwis with this land and the description of it by its title plan number.

Section 23 of Ordinance No. 14 of 1891 requires that a deed produced for registration should contain certain particulars of the land which is "affected thereby"; the section deals with the three cases of such property being an entire land a divided allotment of a land, and an undivided share in a land. In the second case, where such property, that is, the property affected by the deed, "consists of a portion only of one land or allotment, such portion should be clearly and accurately defined by its particular boundaries and extent." In this case the boundaries of these allotments making up the western portion of 4 acres were sufficiently stated and a description of the entire land given, which, though it did not

state the boundaries, left no uncertainty as to what the land was. I am not aware of any authority in which the sufficiency of a registration of this sort has been questioned.

There was, in my opinion, due registration of the deeds P 2, P 3, and P 14 in folios A 21/141, A 21/142, and A 21/143, and the respondent cannot claim that the first duly registered deeds were those in folio A 37/173.

The appellant, therefore, has title to the first land in the schedule to the plaint. Any uncertainty regarding the precise boundary between this portion and that on the east of it, conveyed by P 14, is a matter which concerns himself and the person who now owns the 2 acres given to Chelliah on that deed.

The title to the eastern portion, Nos. 2 and 3 in the schedule to the plaint, is also in the appellant but subject to the lease by Leisahamy of her interest in 4 acres and 16 perches in favour of Herat Mudiyanselage Loku Menika by deed No. 43 of May 3, 1927. The respondent says he is in possession of this, but I can find no deed of assignment by Loku Menika to him.

The deed of lease No. 43 of May 3, 1927, has not been produced, and I have taken the particulars of it from the extracts of encumbrance.

I have dealt with the question of registration on the grounds placed before us by Counsel. The reason given by the learned District Judge, viz., that the appellant's earlier deeds should have been registered in the same folio as the Crown grant, is wrong, for the Crown grant has not been registered.

The appellant having title to the land as claimed subject to the lease, the only issues to be decided are whether the defendant can succeed on the grounds of prescription, and, if not, what damages the appellant is entitled to.

I note that it is stated in the journal entry of September 20, 1928, that the defendant has given up possession to the appellant.

The judgment is set aside, and the case sent back for further trial on the above issues.

The defendant respondent will pay to the appellant the costs of this appeal and the costs of the proceedings of July 26, 1929. All other costs will abide the result of the further trial.

FISHER C.J.—I agree.

Set aside.