Present : Jayewardene A.J.

1923.

APPUHAMY *v.* PETER SINGHO.

55—C. R. Kurunegala, 25,433.

Registration—Consolidation of two lands—Field and high land adjoining thereto—Grantee sole owner of one land and owner of half share of the other.

Two distinct lands, of one of which a person is sole owner and of the other of which he is only entitled to one-half share, cannot be consolidated for purposes of registration without the consent of the owner of the other half share.

But where a field and adjoining high land were treated in the earliest deed produced (P 1 of 1904) as one land, and it was only in recent years the lands were treated as separate lands, the Court held that there was no consolidation of two distinct lands.

"In the later deeds relied on by the defendant the lands have been treated as two separate lands, but that cannot affect the correctness of the description given in P 1."

Fernando v. Perera [1] considered.

THE facts are set out in the judgment.

Samarawickreme, for defendant, appellant.

J. S. Jayawardene, for plaintiff, respondent.

March 28, 1923. JAYEWARDENE A.J.—

In this action the plaintiff sued the defendant to be declared entitled to a 5/48 share of a field called Rukgahakumbura and its adjoining Kongahamulawatta, and to the entirety of a strip on the eastern boundary of these two lands. He admits the defendant's right to the rest of the high land. The defendant claims the entirety of the high land Kongahamulawatta. He makes no claim to the field. The lands were surveyed for the purpose of the case, and are shown in the plan at page 134 of the record. B 1 is marked as the field Rukgahakumbura, A and B (the narrow strip) as Kongahamulawatta. A 1 originally formed part of the Kongahamulahena or watta. The defendant can make no claim to A 1, as the southern boundary of the land purchased by him is given as the Gansabhawa road, which separates A from A 1. The learned Judge has given judgment in favour of the plaintiff as prayed for, with costs. The defendant appeals. It is common ground that the owners of lot A were Wijendra Naide and Punchi Naide. Wijendra Naide, by deed of gift No. 20,485 of December 30,

[1] *(1917) 20 N. L. R. 119.*

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1904, P 1, gifted his half share to his daughter and her four children. The plaintiff claims through some of them. Punchi Naide died leaving two children, Tikiri Appu Naide and Ran Naide, who appears to have sold his one-fourth share to his brother. Tikiri Appu Naide and Netti Nachire, by deed No. 14,416 of December 18, 1912, D 1, sold the entirety of lot A, calling it Rukgahamullawatta, to one Hapuwa, through whom the defendant claims. The defendant also purchased certain rights from one Themis Hamy, who derived title from the grantees of the deed of gift of 1904 (P 1).

The main contention of the defendant is based on the provisions of the Registration Ordinance of 1891. It will be seen, from the facts stated above, that Netti Nachire, who was one of the grantees under the deed of gift, P 1, conveyed a half share of the high land by D1 on January 22, 1913. The defendant says that the registration of P 1 is invalid, as it included and described both the field and the high land, which were two separate lands, as one land within certain specified boundaries. This amounted to a consolidation of two distinct lands, of one of which the grantee was the sole owner (*i.e.*, of the field), and another in which he was only entitled to a half share. Such consolidation is not possible without the consent of the owner of the other half share of the high land, of which there is no evidence, and, hence, the registration of P 1 must be ignored, in view of the judgment of this Court in *Fernando v. Perera* (*supra*). Before the principle laid down in that case can be applied, it must be shown that there were two or more separate lands which have been consolidatd and converted into one *corpus*. Mr. Samarawickreme called the high land a chena, and I have no doubt it is chena land which in recent times has been converted into a watta or garden. The first deed dealing with these lands is P 1 of 1904, and there they are described as "Rukgahakumbura of six pelas sowing extent and of the thereto adjoining Kongahamullawatta of two pelas kurakkan sowing extent," and the boundaries given are the boundaries of the two lands treated as one land. In another deed, P 4 of 1913, in favour of Themis Hamy, from whom the defendant has purchased certain rights (D 3 of 1916), the lands are described as: "Rukgahakumbura . . . . and its adjoining Kongahamulawatta." The same description appears in P 5 of 1919. Now, these are lands in a Kandyan district where chenas and high lands are considered as appurtenant to paddy fields. Sir John D'Oyly, in a passage referred to by Lawrie A.C.J. in *Attorney-General v. Wanduragala*, [1] has stated : "Every field, with few exceptions, had attached to it a garden and a jungle ground called hena, which as a matter of course was inherited and transferred with it." See also *Kirihami v. Fernando Appuhami*. [2] There is no evidence to prove that until within very recent times the field and its appurtenant

[1] *(1901) 5 N. L. R. 98.*

[2] *(1879) 2 S. C. C. 88.*

chena or garden were treated as two distinct and separate lands. The oldest deed produced, P 1, deals with them as forming one corpus, and this is in keeping with the Kandyan custom of treating chenas and gardens adjoining fields as appurtenances of those fields and a part and parcel of them. If this is the correct view, then there has been no consolidation of two distinct lands in P 1, and the grantee of P 1 was justified in treating Rukgahakumbura and its adjoining Kongahamulawatta as one land, within one set of boundaries. In the later deeds, relied on by the defendant, the lands have been treated as two separate lands, but that cannot affect the correctness of the description given in P 1. On these facts the case of *Fernando v. Perera* (*supra*) has no application to this case. The deed of gift has therefore been duly registered, and the title of the plaintiff is good. As regards the narrow strip, B, I make no declaration in favour of the plaintiff, and leave the title to it to be decided in any subsequent action. The defendant does not claim B 1, an cannot claim A 1. The plaintiff will be declared entitled to 5/48 of lot A in the plan dated July 14, 1921, and filed of record. In other respects the judgment is affirmed, and the appeal is dismissed, with costs.

Appeal dismissed.