1920.

Present : De Sampayo J. and Schneider A.J.

FERNANDO *v.* HENDRICK *et al.*

86 and 87—D. C. Matara, 8,418.

Proceedings under the Waste Lands Ordinance—Decree entered of settlement declaring certain lots property of the Crown—Partition action for remainder—Sale by some claimants before waste lands case—Does decree in waste lands case wipe out title of vendees ?

In a proceeding under the Waste Lands Ordinance a settlement was arrived between the claimants and the Crown, and decree was entered declaring certain lots to be the property of the Crown and the rest private property. Thereafter an action was instituted for the partition of the portion declared to be the property of the Crown. The appellants claimed shares under deeds executed by some of the claimants prior to the proceeding under the Waste Lands Ordinance. The District Judge refused to admit any deeds prior to the decree.

Held, that they were admissible in evidence to prove the appellants' title.

"In reality the decree in favour of the claimants in the waste lands case must be held to enure to the benefit of those to whom they transferred their rights previously."

THE facts appear from the judgment.

Keuneman (with him *Croos-Dabrera*), for the appellants in No. 86.

E. W. Jayawardene (with him *M. B. A. Cader*), for the appellants in No. 87.

Cooray, for the plaintiff.

September 27, 1920. DE SAMPAYO J.—

This is an action for the partition of a tract of land shown in the plan filed in the case. There are two appeals in this case. In appeal No. 86 the appellants are the eighth defendant, the eleventh to the nineteenth defendants, and the twenty-sixth defendant.

It appears that the title which they set up in this case was derived by purchase from some claimants in a waste lands proceeding. It appears in 1900 the Crown took steps under the Waste Lands Ordinance to have it declared that certain tract of land was the property of the Crown. In connection with it a reference was made to the District Court, and the claimants as plaintiffs sued the Government Agent claiming the land as private property. But there was a settlement arrived at between the claimants and the Government Agent, the terms being that certain lots should be declared the property of the Crown, and the rest of the land to be

private property. A decree was entered in these terms. The present action is for the partition of the lots which were declared not to be the property of the Crown. The appeal of the appellants in No. 86 has reference to an order of the District Judge, by which he expressed his determination not to accept deeds in favour of the appellants which were prior to the decree in the waste lands proceedings. It appears that the appellants themselves did not come forward as claimants in the waste lands matter, but their vendors did. The idea involved in the District Judge's order appears to be that, notwithstanding the deeds executed by these claimants in favour of the appellants, the decree had the effect of wiping out any title which vested in the appellants, and the claimants, by virtue of the decree, must still be regarded as entitled to the shares which they claimed. I think this is an erroneous view. The real effect of the decree was to declare the Crown entitled to certain portions, and that the balance of the land belonged to private parties. The title of the private parties *inter se* must be determined by other considerations and upon evidence heard with regard to it.

In reality the decree in favour of the claimants in the waste lands case must be held to enure to the benefit of those to whom they transferred their rights previously. Consequently, I think the District Judge ought to have accepted the deeds, and to have decided the question of title upon these deeds and any other evidence relevant to the question.

In appeal No. 87 the appellants are the sixth and seventh defendants. The sixth defendant appears to claim under the sixth claimant in waste lands case, and the seventh defendant was himself the seventh claimant in that case. The point which I dealt with as regards appeal No. 86 arises in appeal No. 87 also, and should, I think, be determined in the same way. That appeal is a little more complicated by the reference which has been made to the written terms of settlement submitted to the Court in the waste lands case.

On July 25, 1900, the claimants, other than the sixth and seventh claimants, filed a statement expressing their willingness that certain lots specified amounting to 175 acres odd should be declared the property of the Crown, and that they themselves be declared the owners of the other lots. The sixth and seventh claimants were not parties to that statement. But on July 26 another statement, to which all the claimants were parties, was submitted to Court practically having the same effect, but slightly different in form.

For in that statement the parties, including the sixth and seventh claimants, expressed their desire to settle the case on the terms that the lots comprising 175 acres odd should be declared the property of the Crown; and that the rest of the land alleged to be 200 acres in extent declared not the property of the Crown. It was objected in the Court below that, in view of the previous statement of July 25,

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on which the decree is supposed to have been entered, the sixth and seventh claimants had no right, and were excluded by the decree. It seems to me that it was on the statement secondly referred to, namely, that of July 26, 1900, that the decree was entered by Court. However that may be, it is the decree itself that should be looked at in connection with the question raised. With regard to that there is no question that the decree was in favour, not only of the other claimants, but also of the sixth and seventh claimants, for it runs that the plaintiffs (otherwise the claimants) be declared entitled to the lots specified corresponding to the land now sought to be partitioned. I think in regard to both these sets of appellants the District Judge's order is erroneous, and in my opinion he should have heard the respective claims on their merits and determined the question of partition accordingly. I would set aside the orders appealed from, and send the case back for proceedings in due course. There is no need to make any order as to the costs of appeal, because the District Judge at the conclusion of the order stated that it was his own view which he gave effect to, and not any objection raised by any of the parties.

SCHNEIDER A.J.—I agree.

Sent back.