Present : Wood Renton C.J. and De Sampayo J.

1915.

APPUHAMY *et al. v.* GOONATILLEKE.

395—D. C. Galle, 12,593.

Prescription—Not affected by registration.

The prior registration of a subsequent deed does not interrupt prescription which has already begun to run in favour of the holder of the earlier (unregistered) deed.

Prescription is a mode of acquisition independent of any documentary title which the possessor may at the same time have, and although documentary title may be defeated by the operation of the Registration Ordinance, the other remains unaffected.

THE facts are set out in the judgment.

Arulanandam, for plaintiffs, appellants.

Batuwantudawa, for defendant, respondent.

Cur. adv. vult.

December 8, 1915. WOOD RENTON C.J.—

In this action the plaintiffs sued the defendant for declaration of title to a plantation on a certain block of land. The defendant admitted the plaintiffs' right to the soil, but claimed the plantation under the planting voucher. The plaintiffs' title was based on a Fiscal's transfer, No. 10,738, dated May 26, and registered on June 23, 1905, on a writ issued in 1903 against the owner of the land, Nikoris. Nikoris had granted the planting voucher to the defendant in 1897, and, on the interpretation of it adopted by both sides and by the District Judge at the trial, this document conferred a proprietary interest in the plantation on the defendant, if the plantation was duly made within five years from the date of its execution. The conditions of the planting voucher in this respect were fulfilled. But the voucher itself was unregistered. The District Judge held that the defendant's rights under it were wiped out by the registered Fiscal's transfer of 1905, but that it was still open to the defendant to prove, and that he had in fact established, a title to the plantation in question by prescription. There was no appeal against the decision of the learned District Judge as to the priority of the transfer of 1905 over the unregistered planting voucher. The question that we have now to decide is whether, in spite of the existence of the registered instrument of 1905, the defendant could establish title to the plantation by prescription.

1915.

WOOD RENTON C.J.

Appuhamy v. Goonatilleke.

In my opinion that question must be answered in the affirmative. There can be no doubt upon the evidence, but that from 1902 onwards the defendant intended to possess and possessed the plantation *anno domini*. It is true that his possession was based on an instrument which was liable to be defeated by the prior registration of a subsequent deed. But no such registration could affect the fact and the character of the possession itself, nor, as it left the physical occupation of the land by the defendant *anno domini* undisturbed, can it be regarded as an interruption of prescription.

On these grounds I would dismiss the appeal, with costs.

DE SAMPAYO J.—

This appeal raises an interesting question of law under the following circumstances. One Nicholas de Silva, who was the owner of the land in dispute, gave it to the defendant to be planted with coconuts on an agreement dated July 5, 1897, whereby it was stipulated, among other things, that the defendant should plant the land within five years, and that he should become entitled to a half share of the plantation when the trees so planted should be beyond the reach of cattle and in bearing. The land was subsequently sold in execution against Nicholas de Silva to Mendis Wijesekera on a Fiscal's transfer dated May 26, 1905, and registered on June 23, 1905; and the second plaintiff, whose lessee the first plaintiff is, has recently purchased the land from a claimant under the execution-purchaser Mendis Wijesekera. The planting agreement was never registered, and the District Judge rightly held that the plaintiffs' title, based upon the registered Fiscal's transfer in favour of Mendis Wijesekera, prevailed over the planting agreement in respect of the one-half share of the plantation thereby vested in the defendant. He has, however, found on the evidence that the defendant has been in uninterrupted and adverse possession of the one-half share of the plantation since the expiration of the period of five years fixed by the planting agreement, and has acquired prescriptive title thereto. The plaintiffs appeal from the judgment by which the District Judge has dismissed their action on that finding.

Counsel for the appellants is right in contending that under the agreement the defendant was to have got his planter's share, not at the expiration of five years from the date of the agreement, as the District Judge thought, but when the trees should have attained the stipulated degree of maturity. But I am satisfied on the evidence of the defendant, which is uncontradicted and stands alone, that the trees attained the requisite maturity, and the planter's share was taken and begun to be possessed by the defendant, before ten years prior to this action. There is practically no dispute as to

these facts. It is argued, however, that, inasmuch as the registration of the deed in favour of Mendis Wijesekera in June, 1905, defeated the defendant's title under the planting agreement, prescription could in law only run from that date. In my opinion this argument is wholly untenable. The benefit of prior registration is, by section 17 of the Ordinance No. 14 of 1891, given to an instrument only against a "deed, judgment, order, or other instrument." Such registration only affects titles based on the "instruments" specified in section 16, and has nothing to do with titles acquired otherwise than upon such instruments. The title by prescription is acquired by acts of possession, and I fail to see that the registration of the deed by the owner against whom prescription is running affects the provisions of the Prescription Ordinance, unless it can be said to be interruption of possession. Even the bringing of an abortive action has been authoritatively held not to be an interruption of possession (*Emanis v. Sadappu*[1]); and in my opinion the registration of a deed, which is still more unsubstantial, cannot be regarded as an interruption of a possession which is as a matter of fact continuous. Prescription is a mode of acquisition independent of any documentary title which the possessor may at the same time have, and although the one may be defeated by the operation of the Registration Ordinance, the other remains unaffected. At the argument I referred to the class of cases in which it has been held that, although the issue of a Fiscal's transfer divests the execution-debtor's title as from the date of sale, that result does not defeat the new and independent title which the execution debtor may have acquired by adverse possession since the sale. See *Sidambaram v. Punchi Banda*.[2] The same considerations appear to me to apply much more strongly to such a case as the present, where there is no question of relation back.

I think the finding of the District Judge on the issue of prescription is right, and I would dismiss the appeal, with costs.

Appeal dismissed.

[1] (1897) 2 *N. L. R.* 261.

[2] (1912) 15 *N. L. R.* 305.