

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

1915.

**RAMASAMY CHETTY v. MARIKAR.**

416—D. C. Colombo, 40,281.

*Registration—Proper folio—Partition of land—Registration in new folio—Sale of land for default of payment of taxes to Municipal Council.*

A, by a deed of 1909, sold the land in question to B. Plaintiff was B's successor in title. These conveyances were registered in a folio to which the registration had been carried forward from the original folio.

Prior to the sale to B (in 1898), A divided the land into two, and gifted the lots to the defendants. These conveyances were registered in 1898, in fresh pages, in which reference was made to the old folio in which the original registration was made. But the old folio did not contain a reference to the new folios where the divided lots were registered.

*Held*, that defendants had superior title.

The term "partition" in section 27 of the Registration Ordinance of 1891 is not restricted to partition by decree of Court.

<sup>1</sup> (1907) 10 N. L. R. 304.

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The premises in question were sold for taxes due to the Municipal Council, and were purchased by the Municipal Council, who re-transferred the same to the defendants in consideration of the payment of the amount of taxes due at the date of the sale.

*Held*, that the conveyance vested title in the defendants.

**T**HE facts are set out in the judgment.

*Bawa, K.C.* (with him *F. M. de Saram*), for defendants, appellants.

*A. St. V. Jayewardene* (with him *Loos*), for plaintiff, respondent.

*Cur. adv. vult.*

December 16, 1915. DE SAMPAYO J.—

This case raises two points, either of which, if decided against the plaintiff, would necessarily involve the dismissal of his case. Mr. A. St. V. Jayewardene, for the plaintiff, in the course of his argument, felt that he could not resist an adverse decision on one at least of the points. We accordingly delivered a formal order allowing the appeal, and dismissing the plaintiff's action, and intimated that we would put our reasons in writing.

The action relates to certain premises situated in Colombo, which at one time belonged to one Alima Umma. The proper folios in the registrar's book for the registration of the deeds of the property were A 33/207 and A 33/211. Alima Umma, by deed dated July 4, 1909, sold the premises to Ahamado Lebbe Marikar, under whom, through certain mesne conveyances, the plaintiff now claims title. These conveyances were registered in a folio to which the registration had been carried forward, and which therefore was for this purpose the proper folio. But Alima Umma had, prior to her sale to Ahamado Lebbe Marikar, divided the premises into two halves, one of which she, by deed dated May 5, 1898, gifted to Kadija Umma, wife of the second defendant in this case, and the other of which she, by deed dated September 21, 1898, gifted to Zainath Umma, wife of the first defendant. These deeds of gift were registered in May, 1898, and October, 1898, and were thus prior both in date and in registration to the deed of sale in favour of Ahamado Lebbe Marikar. But the District Judge has decided, and it is also argued before us, that the deed of sale in favour of Ahamado Lebbe Marikar must nevertheless prevail over the deeds of gift, inasmuch as the latter were not registered in the proper folios. These deeds were certainly not registered in the same folio as the series of deeds upon which the plaintiff claims title, but it does not follow that, as regards the effect of registration, they did not satisfy the requirements of the Land Registration Ordinance. The explanation of the difference in folio lies in the fact that, as stated above, the premises were divided into two portions, and were separately gifted by Alima Umma, and that the deeds of gifts thus got into a different folio in the registrar's

books. Now, section 27 of the Land Registration Ordinance, No. 14 of 1891, provides as follows:—"On the partition of any land registered as one allotment the registrar shall, upon a written application in that behalf, register the new allotments on separate and fresh pages of the book, with such reference as may be necessary to identify them with the original registration." When the deeds of gift were accordingly registered in fresh pages or folios of the book, the registrar made references to the old folio in which the original registration was contained, and it seems to me that in these circumstances the deeds of gift were duly registered. It is, however, argued that the "partition" referred to in the above section is partition by a decree of Court under the Partition Ordinance. In my opinion there is no reason for so restricting the meaning of the word. The provision of the section, I think, applies to division of land however effected. Then, it is said that the requirements of the Ordinance were not satisfied, inasmuch as, though the new folios have references back to the old folio, there are no references forward in the latter to the former. The section does not expressly require this further reference, and I think the Court cannot insist on anything more than the actual references, which appear from the evidence of the official witness in this case to have been in accordance with the system of business observed in the registrar's department.

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The next point, which counsel for the plaintiff admits to be decisive, arises in this way. It appears that the premises were, for the purposes of the taxes due to the Municipal Council, assessed in the name of Kadija Umma and Zainath Umma, and for default of payment of the taxes the premises were sold on August 22, 1910, and were purchased by the Municipal Council themselves, in whom the property became absolutely vested under section 146 of the Municipal Councils Ordinance, No. 6 of 1910, by virtue of a certificate of sale issued as provided by the Ordinance. Thereafter, by deed dated October 24, 1913, the Municipal Council, in consideration of Rs. 50, which was practically the amount of arrears of taxes, sold the property to the first and second defendants and their respective wives. The District Judge has refused to give effect to this conveyance, because he thinks it is not a real transfer of title, but only amounts to handing back of the property on receipt of the amount of taxes due. This view cannot at all be supported. It may be that the consideration was in fact determined by what had been due to the Municipal Council as taxes; but the conveyance nevertheless constitutes a real transfer of the title, which had been vested in the Council by operation of the Ordinance. Even if the view of the District Judge be correct, it would not help the plaintiff, because on that hypothesis the title would still be in the Municipal Council, and the plaintiff's action at all events must certainly fail.

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The judgment appealed from must be set aside and plaintiff's action dismissed, with costs in both Courts. The result will not, however, prejudice the rights, if any, of the added defendants, who intervened and claimed adversely to both parties by prescription.

WOOD BENTON C.J.— I agree.

*Set aside.*