[FULL BENCH.] 1914.

Present: Lascelles C.J. and Pereira and Ennis JJ.

MOHAMAD ALI *v.* WEERASURIYA.

21—D. C. Kurunegala, 4,801.

Registration—Decree— "Affecting land."

By a decree in D. C. Kurunegala, 3,204, E and G were each declared entitled to an undivided half share of certain lands. The decree was not registered. Plaintiff was successor in title to E. and defendant purchased the whole land from G. Defendant's deed was registered.

Held (*per* LASCELLES C.J. and ENNIS J.), that defendant was bound by the decree in D. C. Kurunegala, 3,204, though the decree was not registered.

(PEREIRA J. *dissentiente.*)—A decree entered up in an action embodying adjudication on claims to land is a decree "affecting land," and unless it is registered by the party in whose favour it is entered it would, under section 17 of Ordinance No. 14 of 1891, be void as against a conveyance, duly registered, of the land executed by the opposite party.

THE facts are fully set out in the judgment.

Samarawickreme (with him *R. L. Pereira*), for the defendant, appellant.—The decree in D. C. Kurunegala, 3,204, was not registered. It is a registrable instrument under section 16 of Ordinance No. 14 of 1891, as it is a "judgment affecting land." The non-registration of the judgment makes it void as against the conveyance in favour of the defendant, who has bought it for valuable consideration. It is therefore open to the defendant to call in question plaintiff's predecessor's title. As the decree in D. C. Kurunegala, 3,204, was not registered, it cannot be set up to support the plea of *res judicata.*

Counsel cited *2 Irish Appeals 487.*

[Lascelles C.J.—Judgments do not come within the scope of the Irish Registration Act.]

[Ennis J.—The judgment in D. C. Kurunegala, 3,204, only declares pre-existing title to land. It is not a judgment affecting land.]

There are judgments which do not declare pre-existing title—for instance, a judgment is obtained by default of appearance by one party. It is clear from the context that decrees relating to land were intended to be registered. To interpret the words "affecting

1914.

Mohamad Ali v. Weerasuriya

land " in any other way would be to leave a good many deeds unregistered. This will leave title to lands in a very unsettled state. Counsel cited *Madar Lebbe v. Nagamma.*[1]

[Lascelles C.J.—Is not the question of title *res judicata* between the parties to the case and those deriving title from them ?] But sections 16 and 17 would enable the successor in title of one party to re-open the question of title if the decree was not registered.

The object of these sections is to prevent an innocent purchaser from being defrauded. There will be no protection unless the books at the Registrar's office show what judgments have been obtained as to the land in question.

Bawa K.C., for the respondent.—The interests of the plaintiff and defendant are not " adverse " in the sense in which that term is used in the Registration Ordinance, as they are not derived from the same source. Neither party relies on the judgment as the source of title.

A judgment which merely declares title to land does not " affect land, " and section 16 would not apply to such a judgment.

A mortgage decree is a decree " affecting land, " and should be registered. There are other judgments which affect land.

Counsel cited *Casey v. Arnott,* [2] *Bernard v. Fernando.* [3]

Under section 207 of the Civil Procedure Code the question of title between the parties to case No. 3,204 is *res judicata.* The parties to this case are privies, and they cannot re-open that judgment.

Samarawickreme, in reply.

Cur. adv. vult.

May 29, 1914. PEREIRA J.—

In this case I regret that I am obliged to differ from the rest o the Court. The subject-matter of the action is a half share of a certain parcel of land. In case No. 3,204 of the District Court of Kurunegala a decree was entered up, of consent of parties, declaring one Elapata (the plaintiff in the case) entitled to a half share of the parcel of land referred to above, and ordering that he be " put, placed, and quieted in possession " thereof, and, similarly, declaring one Grigoris (the defendant) entitled to the other half share, and ordering that he be " put, placed, and quieted in possession " thereof. How it was intended to execute that part of the decree which directs that each party be put, placed, and quieted in possession of his half share it is difficult to say. However, Elapata did not register the decree in his favour, with the result that Grigoris sold the whole land to the defendant in the present case, who admittedly was an innocent purchaser for value. The conveyance in favour of

[1] *(1902) 6 N. L. R. 21.* [2] *(1876) 2 Common Pleas 24.*

[3] *(1913) 16 N. L. R. 438.)*

the defendant was duly registered. The plaintiff derives his title from Elapata. The question is whether, in terms of section 17 of Ordinance No. 14 of 1891, the decree in favour of Elapata in case No. 3,204 is not void, for lack of registration, as against the defendant. Section 16 of the Ordinance enacts that every judgment affecting any land should be registered, and section 17 provides that any judgment, unless it is registered, should be deemed void as against parties claiming an adverse interest thereto on valuable consideration by virtue of any subsequent deed duly registered. Now, it is contended that the judgment (or decree) in case No. 3,204 is not a judgment affecting land, and that Grigoris's conveyance in favour of the defendant is not a deed conveying an adverse interest. It is conceivable that a contrary view would tell with some hardship on those who fail to register judgments in their favour, but at the same time it is equally conceivable that should it be held that judgments like that entered up in case No. 3,204 needed no registration, the door would be opened to the perpetration of an immense amount of fraud on the public by the sale, as has happened in this case, of land by parties against whom judgments have been entered by concealing that fact to innocent purchasers. I think, therefore, that this is eminently a case in which we should be careful to administer the law as we find it, leaving it to the Legislature to take action to amend it if so advised.

The direct question for decision in the case is whether a decree which is an embodiment of an adjudication on claims made to any land by the parties to an action is not a decree affecting land. I do not think that we can derive much help from cases decided in England in construing the expression "judgments affecting land." There is certainly no case quite in point, and the expression as used in certain English statutes has reference to the peculiar effect, as regards land, of judgments of Courts in England. Under the Statute of Westminster (13 Edw., 1st st., l. c. 18), a judgment in England, that is to say, a judgment for a mere debt, such as would be called a money decree in Ceylon, gave the creditor a general charge on the debtor's lands. The Judgments Act, 1838 (1 & 2 Vict., c. 110), converted this general charge into a specific lien. Then came the Judgments Act, 1864 (27 & 28 Vict., c. 112), which enacted that no judgment should affect any land until the land had been actually delivered in execution by virtue of a writ of *elegit* or other lawful authority. The use of the expression "affect any land" here cannot help us to interpret the same expression in our Registration Ordinance, because it is used with reference to a judgment which *ex facie* had nothing to do with land, and the provision, in effect, is that such a judgment should not be allowed to affect any land of the judgment-debtor except in certain circumstances. But the judgment that we are now dealing with directly affected claims to land, and clearly in our Registration Ordinance

1914.

PEREIRA J.

Mohamad Ali v. Weerasuriya

the expression " judgment affecting land " is used in the sense of a judgment affecting any title, right, or claim to land, and it is manifest that the mischief that the Ordinance was intended to provide against was exactly such as has occurred in the present case. It is well illustrated by the present case.

Then, can it be said that the defendant in the present case claims an interest adverse to that of the plaintiff ? It has been said that interests are not adverse unless they are derived from the same source. In the present case it so happens that the decree in case No. 3,204 was what might be called a consent decree. So that the right of Elapata really emanated from Grigoris as a result of the consent given by him, and the deed on which the present defendant relies is also from that same source. But suppose this were a case in which the decree was pronounced by the Court, not of consent but on the merits of the case, the question is, what was the right really gained thereby by Elapata. He obtained no title to the land in claim, because that he already had. The right gained by him was a right to prevent Grigoris from advancing a claim to the land in question. A claim by Grigoris was therefore adverse to that right, and it is no more than such claim that the present defendant now sets up on the strength of the conveyance by Grigoris.

It is said that if the words " Judgment affecting land " in the Registration Ordinance are given the meaning that I have mentioned, the provision would conflict with section 207 of the Civil Procedure Code. I do not think that can be so. Section 207 speaks of decrees of all kinds. As regards a particular class, namely, decrees affecting land, the Registration Ordinance provides that unless they are registered they should be void as against subsequent adverse claims. There is no conflict here with section 207 of the Civil Procedure Code. That section enacts that all decrees shall be final between the parties. The Registration Ordinance provides that a decree affecting land should be registered, and that unless it is registered it should be void as against an innocent purchaser for value from one of the parties on a registered conveyance. I fail to see the conflict.

For these reasons I think that the appellant is entitled to succeed. and I would allow the appeal with costs.

LASCELLES C.J.—

The question of law reserved for consideration by the Full Bench is, as far as I am aware, a new one.

The plaintiff and the defendant each claim title to the whole of the land in dispute from a separate source. The plaintiff claims through one Elapata from one Kiriya, and the defendant through one Grigoris Fernando from one Ukubanda. In 1908 Elapata (through whom the plaintiff claims) sued Grigoris Fernando (through whom the defendant claims) in D. C. Kurunegala, No. 3,204, with

respect to the land now in dispute, and by consent half of the land was decreed to Elapata and half to Grigoris Fernando. After this decree, Grigoris Fernando, although entitled to half only of the land, conveyed the whole to the defendant, who bought for valuable consideration and without notice of the decree. The defendant registered his conveyance. In these circumstances, the question arises whether the present action is not *res judicata* by reason of the decree in the previous action, inasmuch as both plaintiff and defendant derive title through the parties to that decree. The learned District Judge has decided this question in the affirmative, and the defendant now appeals.

His argument may be stated as follows. The decree in D. C. Kurunegala, No. 3,204, was a " judgment affecting . . . . land " within the meaning of section 16 of the Land Registration Ordinance, No., 14 of 1891, and as such is a registrable instrument. But this decree, not having been registered, must be deemed void under section 17 as against the defendant's subsequent conveyance for valuable consideration. The defendant's title, therefore, must be considered as though the previous judgment had no existence, so that the plaintiff is precluded from claiming that the matter in dispute in this action is *res judicata* in virtue of the previous judgment.

The question raised is of far-reaching importance. It has not been the practice to register decrees in land cases, and if it is held that such decrees can be re-opened in the manner in which the decree under consideration is now sought to be re-opened, a vast number of titles which are now believed to be secure will be put in question, and it is difficult to see where litigation would stop.

I have come to the conclusion that the appellant's argument is fallacious.

At first sight it may appear paradoxical that a judgment declaring the rights of litigants to land is not a " judgment affecting land." But I am satisfied that the expression refers to an entirely different class of judgments. In construing our Registration Ordinance, it must be remembered that the phraseology of these enactments is largely borrowed from that of English Acts of Parliament, and that an examination of these Acts often explains what is obscure in these Ordinances. If reference be made to English Acts of Parliament dealing with similar matters, many illustrations will be found of the sense in which judgments are referred to as " affecting land."

Speaking quite generally, a judgment-creditor in England is regarded as having an actual charge or specific incumbrance on the land of the judgment-debtor for the amount of his debt. The precise nature of this right and the conditions subject to which it is enforceable are defined by a long series of statutes, which afford numerous illustrations as to what is meant by judgments " affecting land."

1914.

LASCELLES C.J.

Mohamad Ali v. Weerasuriya

Thus, by 23 & 24 Vict., c. 38, s. 1, it is enacted that no judgment " shall affect any land " as to a *bona fide* purchaser for valuable consideration unless writ shall have been first issued. The same term is used in 27 & 28 Vict., c. 112, s. 1; no judgment " shall affect any land " until the land has actually been delivered in execution. Similarly, by 4 & 5 Will and Mary, c. 20, s. 30, and amending statutes, it is enacted that no judgment not docketed and entered in the books mentioned in the Acts shall " affect any lands or tenements."

The expression " affecting land " is used in the same sense of creating a charge or incumbrance in 112 Vict., c. 110, s. 19, in 2 Vict., c. 11, s. 5 (where the words are " bind or affect any lands," &c.), and in 3 & 4 Vict., c. 82, s. 2.

When we turn to the statutes dealing with registration, we find the same expression used in the same sense. Under the Middlesex and Yorkshire Acts no judgment " shall affect or bind any hereditaments " before entry of the memorandum.

The statute 8 Geo. 2, c. 6, s. 1, though it does not refer to judgments as " affecting land," is nevertheless instructive. Judgments, &c., are void against subsequent purchasers for value unless registered before the memorial of conveyance under which the purchaser claims, but if the judgment is registered within twenty days after the signing thereof, the lands of the defendant shall be " bound thereby."

It is clear that the judgments which are declared to be void as against purchasers are judgments which would otherwise have " bound " the land of the defendant in the sense of charging the land with the payment of a debt.

I think the examination of these English statutes, which are more or less *in pari materia* with our Registration Ordinances, goes to show that a " judgment affecting land " means a judgment which by its own operation creates some right in the land, or imposes something in the nature of a charge or burden; and that the term is not there used with reference to judgments which are merely declaratory of the titles or interest of the parties, which are derived, not from the judgment itself, but depend upon previously acquired rights.

I am therefore of opinion that a judgment " affecting land," for the purposes of this Ordinance, must be understood to be a judgment which, by its own operation, invests a person with an interest in the land, such, for example, as a partition decree, or a judgment which imposes or creates some charge, interest, or liability.

But however this may be, I think the appellant's case fails on another point.

Section 17 has always been held to be applicable to cases where there is a competition between two or more instruments of title proceeding from the same source. But the appellant seeks to use

the section for an altogether different purpose. He wishes to get rid of a disability imposed upon him by the law of evidence, and to be allowed to prove in this section what he would otherwise have been precluded by the law of estoppel from proving. This, I think, is what his contention really amounts to. It is true that the law of estoppel by matter of record is not enacted as part of our Evidence Ordinance, and that it is formulated in a very incomplete shape in section 207 of the Civil Procedure Code. But the law of estoppel by matter of record is none the less a branch of the law of evidence.

Even assuming the judgment in question to be a registrable instrument, it would be straining the language of section 17 to hold that the defendant is relieved of the bar created by the judgment, merely because his deed is registered and the judgment is unregistered. The language of the section will not admit of such a construction. The plaintiff does not claim " an adverse interest " to the defendant in virtue of the judgment. He claims no interest at all under the judgment. He, in effect, says to the plaintiff: " The matter now in question was judicially determined in an action to which your vendor was a party. I claim the benefit of the rule of law which forbids you from again putting this matter in question." Section 17 does not enable the defendant to meet this objection. The defendant would have us construe the section to mean that an unregistered judgment shall not be pleaded as *res judicata*, as against a party claiming under a subsequent registered instrument. But the language of the section will not bear such a construction.

For the above reasons I think that the judgment of the Court below is right, and I would dismiss the appeal with costs.

ENNIS J.—

In this case, by a decree dated August 25, 1908, two persons, Charles Elapata and Grigoris Fernando, were declared each entitled to an undivided half share of certain lands. The decree was not registered.

The plaintiff is by a series of deeds the successor in title to Charles Elapata.

The defendant is a purchaser from Grigors Fernando who sold the entire land without disclosing the decree of 1908.

The preliminary issue were tried first:—

(1) Is the decree *res judicata*, and is the defendant estopped from denying the plaintiff's title?

(2) Is it void as aganst defendant's title by reason of its not having been registered?

The learned District Judge found in favour of the plaintiff.

It was argued in appeal that the decree was an order of the Court affecting land, and as such should have been registered as required by section 16 of the Land Registration Ordinance, No. 14 of 1891.

1914.

ENNIS J.

Mohamad Ali v. Weerasuriya

That not having been registered it was void under section 17 of that Ordinance against one who claimed an adverse interest in the land by virtue of a subsequent registered deed. It was conceded that the Land Registration Ordinance could not operate to create title, and that the defendant could not obtain a greater title than his vendor had; but it was urged that the decree being void the parties were free to litigate over again the matters settled by the decree.

On the first point, I am not convinced that a decree merely declaring title to land is an order of the Court "affecting" land as contemplated by the Land Registration Ordinance. It will be observed that the other documents, the registration of which is compulsory under section 16, are all documents affecting the devolution of land by transfer, transmission, or charge. They all affect the title to land; but how can a decree which merely declares title affect the title? The title existed presumably before the action in which the decree was had, and the decree declaring title is the expression of the finding of the Court as to the true state of the existing title. It must be presumed to be a right finding, and not one which affects the title, but one which merely settles it.

Assuming, however, for argument, that a decree declaring title to land is a document which must be registered under section 16, what would be the effect of registration? Section 17 provides that an unregistered instrument is to be deemed void as against persons claiming an adverse interest thereto on valuable consideration by virtue of a subsequent registered deed, but there is a proviso that this shall not be deemed to give any greater effect to the registered instrument than the priority conferred by the section. This section, in my opinion, means that the unregistered instrument is to be deemed void only for the purpose of establishing priority in the registered deed, and for no other purpose. In this case no question of priority arises, because, in my opinion, the principle of priority applies only between parties deriving title from the same source, for the Land Registration Ordinance does not establish rights to land, by registration: it affects only the devolution of rights, and leaves an unregistered instrument unaffected for all purposes other than the establishment of a prior claim to one and the same thing. The effect of an unregistered instrument as evidence to establish an independent original right is not, in my opinion, altered by the Ordinance.

A somewhat similar conclusion was arrived at in *Bernard v. Fernando*,[1] where two persons owned an undivided one-fifth of a land, but were subsequently by a partition decree allotted two separate lots. After the passing of the decree, but before it was registered, they sold an undivided one-fifth of the entire land. In that case it was remarked, "It cannot be supposed that the

[1] *(1913) 16 N. L. R. 438.*

Registration Ordinance was intended ..... to defeat the whole object of legislation with regard to partitioning of lands ..... The truth, I think, is that the expression ' adverse interest ' refers only to cases where two persons claim interests traceable to the same origin." The partition decree in that case was held good to establish title to the two separate lots ; so in this case, in my opinion, the decree of August 25, 1908, is good to bar claims between the same parties and their successors in title at variance with the decree. In my opinion sections 16 and 17 of the Registration Ordinance were never intended to affect title in any other way than by giving priority in cases of alienation and incumbrances, matters which affect property in interests derivable from the same source, but do not affect the validity of separate titles. So far as the Registration Ordinances do not establish title by registration, and merely deal with the registration of documents of title, the effect of the Ordinances on the validity of title by priority of registration must necessarily be limited to devolutions of property from the same source by conflicting deeds.

In my opinion the defendant is estopped by the decree of August 25, 1908, and I would dismiss the appeal.

Appeal dismissed.