

1941

*Present : Howard C.J. and Soertsz J.*  
**DE SILVA v. WEERAPPA CHETTIAR.**

285—D. C. Negombo, 10,378.

*Registration—Certificate of no claim—Registrable instrument—Registration of Documents Ordinance (Cap. 101), s. 8.*

A certificate of no claim is an instrument affecting land within the meaning of section 8 of the Registration of Documents Ordinance and is a registrable document.

**A** PPEAL from a judgment of the District Judge of Negombo.

*N. Nadarajah, K.C.* (with him *J. E. Alles*), for eighth defendant, appellant.

*H. V. Perera, K. C.* (with him *H. E. Amerasinghe* and *C. J. Ranatunga*), for plaintiff, respondent.

*Cur. adv. vult.*

March 27, 1941. SOERTSZ J.—

The question that arises for decision on this appeal is whether the eighth defendant's deeds prevail by virtue of prior registration over the deeds upon which the plaintiff and the first to seventh defendants rely to claim lot A in plan No. 2,984 as part of their land A, B, and as such liable to partition among themselves. The eighth defendant on the other hand asks that lot A be excluded from the partition as land belonging to him.

It seems clear that lot A is made up of two blocks of land called Milla-gahawatta, one 2 acres 2 roods and 26 perches, and the other 2 acres 2 roods in extent. Both these blocks, at one time, belonged to one Piloris, who held a certificate of no claim from the Crown for the larger block and based his claim to the smaller block on a purely prescriptive title.

It is not disputed that the deeds upon which the plaintiff and the original defendants rely to claim lot A go back to Piloris and are earlier in date of execution than the deeds to which the eighth defendant traces his title, but the eighth defendant contends that his deeds gain priority by registration inasmuch as they are registered in the right folios.

In regard to this question of right and wrong folios, the facts are as follows: The first transaction registered in respect of the 2 acres 2 roods 26 perches block is the certificate of no claim issued by the Crown to Piloris in 1896. This is registered on August 30, 1905, in C 138/366. The next dealing with this block that is registered in this folio is a deed of gift of the year 1927, registered in the same year. The earliest transaction registered in respect of the 2 acres 2 roods block is a deed of lease of the year 1901, registered in that year in C 116/99. There are no cross references between these folios, but at the end of the folios carried over from folio C 138/366, there is a note which says: "This with another land forming one property is registered in C 355/114". A glance at that folio shows that only one transaction has been registered in it, namely, Deed of Transfer 1054 of April 11, 1935, registered two days later. This is deed 8D9 in the eighth defendant's chain of title. But what is important is that this folio makes reference to C 314/129 and 130 and this helps us to trace registration back to C 138/366 through C 297/97, 116/99, 314/129, and 297/98 and shows us that in this way the registrations relating to both these blocks in the eighth defendant's line of title are connected.

In regard to the instruments in the course of the plaintiff's and first to seventh defendants' title, the first registration is that of a deed of gift by Piloris in the year 1914, registered in that year in folio C 187/214. The other transactions leading up to the plaintiffs' and first to seventh defendants' title occur in this folio and its continuation, and there is reference made in this folio to C 144/259. There is no reference to C 138/366, while in C 138/366 the reference is to C 138/259, which



admittedly, is a folio quite foreign to this land. It seems clear that the reference to C 138/259 is erroneous. The correct reference to make was to C 144/259, and if this reference had been made, the registrations commencing in folios C 138/366 and 116/99 would have been connected with the registrations of the plaintiffs' and first to seventh defendants' title deeds.

The eighth defendant says that, in consequence of this wrong reference, the plaintiffs' and first to seventh defendants' registrations were a sealed book to him and that those registrations do not affect his title.

Counsel for the respondents sought to meet this case of the eighth defendant in two ways. He contended in regard to the 2 acres 2 roods 26 perches block that folio C 138/366 could not be regarded as the earlier and, therefore, the correct folio in comparison with the plaintiffs' folio is C 187/214 because he maintained that the registration of the certificate of no claim was irrelevant in that it was not a registrable instrument. Secondly, he contended that the wrong reference given in C 138/366 was a matter for which he could not be held responsible, and that, therefore, the equities being equal as between his clients and the eighth defendant, the law must prevail and give his clients, whose deeds are earlier in date of execution, their full effect.

In my opinion, a certificate of no claim is a registrable instrument. Section 6 of the Registration of Documents Ordinance says that in Chapter III. of that Ordinance instrument means instrument affecting land, unless the context otherwise requires. Section 8 enumerates instruments that shall be deemed to affect land, and among the enumerated classes are "deeds or other instruments for *establishing* or transferring any security, *interest* or encumbrance affecting any land (other than a lease at will, or for any period not exceeding one month)". The Encroachments upon Crown Lands Ordinance (Cap. 231) provides in section 8 for the granting of certificates of no claim and enacts that "such certificate . . . attested by the Government Agent shall be received by any Court *as good and valid title* to such land against any right, title or claim of the Crown thereto existing at the date of such certificate". It seems clear, therefore, that a certificate of no claim establishes an interest affecting land. It was, therefore, a registrable instrument. The result is that, as between C 138/366 and C 187/214, the former is, in law; the earlier folio and folio C 116/99 is connected with C 138/366 in the manner I have already stated.

In regard to the second point raised by the respondent's Counsel, I think it is probable that, in the circumstances of this case, the wrong reference given in C 138/366 is due to an error on the part of an officer in the Office of the Registrar of Lands. The question remains whether the quoting of references is a matter over which a party tendering deeds and other instruments for registration has control. In *Cornelis v. Abey-singhe*<sup>1</sup> Wood Renton A.C.J., in the course of commenting on the rulings in *De Mel v. Fernando*<sup>2</sup>, *Mohamadu Sali v. Isa Natchia*<sup>3</sup>, *Paaris v. Perera*<sup>4</sup> and in an unreported case, said: "it may be well to add, however, that the decisions in question have turned on the presence of negligence of

<sup>1</sup> 5 *Bal : N. C.* 30.

<sup>2</sup> 4 *N. L. R.* 290.

<sup>3</sup> 15 *N. L. R.* 157.

<sup>4</sup> 15 *N. L. R.* 148.

some kind or other on the part of the applicant for registration. The Supreme Court has not yet, I think, held that an applicant for registration would be deprived of his priority by the sole or gratuitous fault or mistake of his registering officer". The occasion to consider that matter appears to have now arisen, but this question whether the wrong reference given is due to the negligence of a clerk in the Registry Office has not been considered in the Court below. The document P 17 is not admissible, in view of the manner in which it has come into the record. Moreover, all it says is that the mistake *may* be due to a clerical error on the part of the Registration Clerk at the time.

In the circumstances, I think the case should go back for the parties to have an opportunity to adduce such evidence as they desire on this point as to how it came about that reference was made to C 138/259, and not to C 144/259. Was it due to negligence? Whose negligence was it? Was it in the power of the party tendering the deed for registration to prevent such negligence? Or to have the entry rectified? If the parties or either of them adduce evidence on these points the learned trial Judge will record his findings on the facts and will also consider what, in view of those findings, the resulting position in law is. He will also make such order as to costs as he thinks fit, including the costs of this appeal.

If neither party leads further evidence on the points indicated within two months of this order being communicated to the proctors in the case, the record shall be returned to this Court, so that order may be made allowing the appeal with costs, for on the case as it stands at present, the eighth defendant, appellants' successors, are entitled to the interest claimed by virtue of prior registration.

HOWARD C.J.—I agree.

*Set aside.*

