

NOTE.—Please substitute for copy of Judgment previously issued.

Privy Council Appeal No. 69 of 1918.

Walter Benjamin Rajapakse - - - - - *Appellant*

James Peter Fernando - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL. DELIVERED THE 14TH MAY, 1920.

Present at the Hearing :

VISCOUNT HALDANE.

LORD MOULTON.

LORD PARMOOR.

[*Delivered by* LORD MOULTON.]

In this case the appellant who was plaintiff in the action brought an action of ejectment against the defendant in respect of certain lands described in a grant by the Crown to one Thomas Carry dated the 22nd February, 1912, and registered in the Land Registry of the district in Folio F 120/125. The lands are therein described as in the village of Ihalamedogoda. The date of the registration is the 16th October, 1914. This grant is the foundation of the title of the appellant, but it is not necessary to set forth the various steps by which the appellant traces his title from the said Crown grant as no objection is raised to them.

The respondent's case is that the lands in question were conveyed by the said Thomas Carry to his predecessors in title by a deed dated the 11th December, 1909, registered on the 15th December, 1909, in Folio F 81/366. As that date was prior to the date of the registration of the Crown grant to Thomas Carry the appellant contends that the latter was improperly registered by being placed in a different folio, and that further the said Thomas Carry was incapable of giving a title to the lands in question to anyone other than the respondent's predecessors in title, inasmuch as the title acquired by the said Thomas

Carry under the Crown grant went automatically by operation of law to complete the title purporting to have been granted by the said Thomas Carry by the transfer of the 11th December, 1909, above referred to.

The relevant facts are as follows. Prior to the events referred to above Thomas Carry had purported to purchase the lands in question from various native occupiers. He formed an estate which he termed the Medagoda Estate out of them, and it was that estate which by the deed of the 11th December, 1909, he purported to convey to the respondent's predecessors in title. The various conveyances from the native occupiers were duly registered, but it is not necessary to refer to them, more particularly as it is admitted that the occupiers had no further title than was given to them by their being in possession of the lands, and that the real title was in the Crown.

Thomas Carry therefore in conveying the lands in question to the predecessors in title of the respondent by the deed of the 11th December, 1909, was conveying that to which he himself had no valid title. But on the 22nd February, 1912, he obtained a Crown grant of these lands.

Both the Courts below have found that the lands in question were covered by the conveyance from Thomas Carry to the respondent's predecessor in title, which (as has already been stated) was dated the 11th December, 1909, and registered on the 15th December, 1909, in Folio F 81/366, and their Lordships see no reason to doubt the correctness of this conclusion, apart from the fact that there are two concurrent findings of fact to this effect in the judgments in the Courts below.

It is clear therefore that the registration of the Crown Grant should have been in the same Folio as the registration of the conveyance of the 11th December, 1909. In any case, under Section 24 of the Land Registration Ordinance, 1891, the later registration must state the volume and folio of the Register in which such property has been previously registered. The language of the section makes this imperative, and it is obvious that observance of this provision is vital to the effectiveness of a system of registration. In the present case Thomas Carry, who held the Government grant and must have been party to the registration, was fully aware of the earlier conveyance, and the infringement of the Regulation in Section 24 must have been intentional on his part. Their Lordships are not prepared to hold that the registration of the Crown grant was under these circumstances valid, or that it had any effect at law.

But it is not necessary to discuss the effect of this upon the appellant's title, because their Lordships are of opinion that by the Roman-Dutch law as existing in Ceylon, the English doctrine applies that where a grantor has purported to grant an interest in land which he did not at the time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the benefit of the earlier grantee or as it is usually expressed "feeds the estoppel." When, therefore, on the 22nd February,

1912, Thomas Carry acquired from the Government the title to the lands which he had conveyed by the deed of the 11th December, 1909, the benefit of that title accrued to the grantees under that deed, *i.e.*, the respondent's predecessors in title. It is possible that the existence of a compulsory scheme of registration might under certain circumstances bring about modifications of the application of that doctrine to land in Ceylon, but in the present case no such difficulties arise, because the earlier conveyance was duly registered and was the only deed relating to the lands in question, which was registered or even existing at the time.

A great part of the argument on behalf of the appellant was based on the fact that in the register of the grant of the land by Government to Thomas Carry, it is spoken of as the Ihalamedogoda Estate, and in the registration of the deeds relating to the title of the appellant, it is registered as being in the village of Ihalamedogoda, whereas in the deeds relating to the respondent's title, it is spoken of as being in the village of Medogoda. But the provisions of Section 24 of the Ordinance turn on the identity of the lands and not upon the identity of the nomenclature by which they are described, and their Lordships have no doubt that the change in name did not connote any change in identity and was not understood so to do by anyone concerned.

Their Lordships are therefore of opinion that the decisions in the Courts below were right, and will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

WALTER BENJAMIN RAJAPAKSE

v.

JAMES PETER FERNANDO.

DELIVERED BY LORD MOULTON.