

1905.
June 22.

PODDA *v.* PABULI *et al.*

C. R., Negombo, 11,310.

Crown grant, effect of—Possession of Crown land for over ten years—Jus in re—Jus retentionis—Sale by Crown—Rights of purchaser from Crown—Ordinance No. 12 of 1840, s. 8.

A Crown grant does not convey an indefeasible title.

Where a person has been in uninterrupted possession of land belonging to the Crown for not less than ten years nor more than thirty years, such person acquires under section 8 of Ordinance No. 12 of 1840 a permanent interest in the property; and he cannot be ejected therefrom, unless the land is required for public purposes or for the use of His Majesty; and the Crown cannot by selling the land to a third party deprive the possessor of the benefit given to him by that section.

THE facts are fully set forth in the judgment.

H. A. Jayewardene, for appellants.

H. J. C. Pereira, for respondent.

Cur. adv. vult.

22nd June, 1905. GRENIER, A.J.—

In this case the plaintiff alleged that one Wanasinpedige Pabuli was entitled to the land called Delgahawatta, the boundaries of which are given in the first paragraph of the plaint, by virtue of a grant from the Government of Ceylon bearing No. 31,272, dated the 15th December, 1896. It was also alleged that the grantee and her husband Menika, by their deed No. 23,477, dated 8th January, 1899, transferred a half share of the land to the plaintiff, and put him in possession thereof, the remaining half share being the property of the fourth defendant. The plaintiff pleaded a title by prescription, and his cause of action against the three defendants was that they took wrongful and unlawful possession of the plaintiff's half share of the land, and have been in possession of it since the 12th October, 1903. The action was brought on the 28th March, 1904.

The defendants answered, denying that the Crown was the owner of the land, on the 15th December, 1896, or that it had any right to sell and transfer it to plaintiff's vendor, Pabuli, or that it put her in possession as alleged. The title disclosed by the defendants was that one Sawwa and Unga, who were brothers, were the owners of the land by right of prescriptive possession, and they also alleged that the Crown could not deprive Sawwa and his heirs of the right of purchasing the land on payment of half the improved value of it. It would thus appear that the defendants admitted the original title to be in the Crown. The defendants also alleged that Sawwa and Unga divided the land into two equal parts many years ago—the date of the division is not specified; that Sawwa possessed the eastern portion and Unga the western portion, which is now in the possession of the fourth defendant.

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The Commissioner framed five issues, and a good deal of evidence was led on both sides. I may say at once that on the first issue—whether the Crown grant conveyed an indefeasible title to plaintiff—it is now settled law that a Crown grant does not convey such a title. The Commissioner was, therefore, wrong in deciding this issue against the defendants. The Commissioner says that if the defendants chose they may claim damages from the Crown; but I would direct his attention to a judgment which is not reported, a copy of which I have directed the Registrar to be forwarded to him, in which a Bench of two Judges in a case similar to the one before me held as follows. (I am quoting from Mr. Justice Wendt's judgment in D. C., Colombo, 15,126);

“The right which a possessor, an improver of land, acquires under section 8 of Ordinance No. 12 of 1840 is something greater and higher than that of the holder of an agreement to convey. He has possessed and improved the land, and that would under the Common Law entitle him to retain possession as against the owner until he was paid the full value of his improvements. The Ordinance substitutes for that right the right to claim half the improved value of the land, and the full value of all buildings if the Crown desires to turn the possessors out on the ground that it requires the land for public purposes or for the use of His Majesty. If the land is not so required the possessor cannot be turned out, but is entitled to a grant of the land on paying half its improved value. Now, it cannot be contended that if a man has entered upon and improved my land under the circumstances entitling him to the *jus retentionis*, I could defeat his right by merely transferring the land to another, and that this other could obtain ejectment against him without compensating him for the improvement to the land.”

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In the present case the Commissioner has not found definitely on the question of possession. It was submitted for the appellants that they had been in possession of the land for nearly one-third of a century before the Crown granted it to Pabuli. There is no precise proof of such possession. If the appellants could establish their possession in terms of section 8 of Ordinance No. 12 of 1840—that is, that they had uninterrupted possession and had cultivated, planted, or otherwise improved the land for not less than ten nor more than thirty years—then they would be entitled to a grant from Government on payment by them of half the improved value of the land, unless Government should require the same for public purposes or for the use of His Majesty. If they had been in such possession, their rights would not be in the slightest degree affected by the grant in favour of Pabuli in 1896.

I would, therefore, set aside the judgment of the Court below, and send the case back for the Commissioner to find on the question as to the possession of the land by the defendants, guiding himself in his ultimate decision by the judgment of this Court which I have already referred to. Both parties are at liberty to adduce further evidence in regard to possession. All costs will abide the final result.

