

1965 *Present*: H. N. G. Fernando, S.P.J., and Tambiah, J.

ACHCHIKUDDY, Appellant, and S. KRISHNAR *et al.*, Respondents

S. C. 427/1966—D. C. Jaffna, 1493/L

Thesavalamai—Action for pre-emption—Rejection of plaint on ground of prescription—Permissibility—Civil Procedure Code, s. 44—Thesavalamai Pre-emption Ordinance (Cap. 64), s. 9—Registration of a deed—Proper folio—Registration of Documents Ordinance.

Where the plaint in an action for pre-emption was rejected on the ground that the action fell under section 9 of the Thesavalamai Pre-emption Ordinance and was prescribed by reason of the lapse of more than one year from the date of the registration of the purchaser's deed of transfer—

Held, that the plaint could not be rejected under section 44 of the Civil Procedure Code if there was nothing on the face of it to indicate that the action was prescribed.

Obiter: Where a deed has been registered by the defendant in the wrong folio, the plaintiff's registration of the *lis pendens* in that folio cannot convert the wrong folio into the correct folio.

APPEAL from a judgment of the District Court, Jaffna.

C. Ranganathan, Q.C., with *E. B. Vannitamby*, for the plaintiff-appellant.

V. Arulambalam, for the defendants-respondents.

November 5, 1965. H. N. G. FERNANDO, S.P.J.—

This is an action for pre-emption in respect of a land which was transferred by a deed executed on 22nd of June, 1959. The plaint was filed on 20th November, 1961. The learned District Judge has held that the provisions of Section 44 of the Civil Procedure Code apply in this case and that the plaintiff should have set out in his plaint the ground upon which he claimed exemption from the relevant limitations created by section 9 of the Thesawalamai Pre-Emption Ordinance (Chapter 64). For the reason that the plaintiff has failed to state the ground the learned District Judge has rejected his plaint.

Section 9 limits the time within which action can be instituted or maintained, that is if more than one year has elapsed from the date of the registration of the purchaser's deed of transfer action cannot be instituted.

When the objection taken by the defendants in this case was inquired into, the defendants took up the position that their deed had been registered but the plaintiff maintained that the deed had been registered in the wrong folio. Undoubtedly, if the deed had been registered in the wrong folio, it was not duly registered and the wrong registration would not bring into effect the provisions of section 9 of Chapter 64 and the plaintiff's action would not therefore be barred.

The plaintiff maintains that the correct folio applicable to this land was some other earlier folio but when he brought his action he registered the *lis pendens* of this action in the same folio as that in which the defendants' deed was registered: but the plaintiff in addition had a cross-connection inserted to connect up with the former correct folio. The learned District Judge seems to think that in this way the plaintiff adopted a wrong folio and that the wrong folio thus became the correct one. The idea, that a registration in a wrong folio could subsequently become correct by reason of some sort of acquiescence on the part of some individual, is not supported by the provisions in the Registration of Documents Ordinance as to what is the proper folio for registration. What seems to have happened in this case is that the plaintiff well after the execution of the deed came to know of it and on a search found the registration of the transaction in a particular folio. Although his position is that some other folio is the correct folio, he has taken the precaution to register his *lis pendens* in the folio where the deed was registered. This action on the part of the plaintiff cannot convert what might be the wrong folio into a correct one. When the plaint was filed, there was nothing on the plaint to indicate that the action was prescribed

on the face of it, and therefore there is no reason for the application of section 44 of the Civil Procedure Code. The order rejecting the plaint is set aside and the record is returned to the District Court for further proceedings to be taken. It will be open to the defendants to contend subsequently that the folio in which they actually registered the deed is in effect the correct folio. The plaintiff will be entitled to the costs of this appeal and also of the proceedings of 9th September, 1963.

TAMBLAR, J.—I agree.

Case sent back for further proceedings.
