

1957 Present : Weerasooriya, J., and Sinnetamby, J.

VELLATHAMBY, Appellant, and THE ATTORNEY-GENERAL,  
Respondent

*S. C. 11—D. C. Batticaloa, 1,090/L*

*Irrigation Ordinance (Cap. 312)—Certificate of sale in favour of Crown—Nature of Crown's title—Sections 2 (1) (f), 66 (2), 68—Registration of Documents Ordinance (Cap. 101), s. 7 (1).*

Where land sold under the Irrigation Ordinance for non-payment of irrigation rates due in respect of it is purchased by the Crown and a certificate is thereafter issued vesting title in the Crown, all previous titles to the land must, by virtue of sections 2 and 66 (2) of the Ordinance, be regarded as wholly extinguished, or suspended, by operation of law, and a new title is created in the Crown which is good against all persons. Accordingly, a subsequent transferee from the original owner of the land cannot claim title to it by priority of registration as against the Crown.

**A**PPPEAL from a judgment of the District Court, Batticaloa.

*Walter Jayawardene*, with *A. S. Vanigasooriyar*, for the plaintiff-appellant.

*V. Tennekoon*, Crown Counsel, with *M. Fernando*, Crown Counsel, for the defendant-respondent.

*Cur. adv. vult.*

February 22, 1957. WEERASOORIYA, J.—

On the 18th June, 1945, two allotments of land called Akkarai Vyal were sold under the provisions of the Irrigation Ordinance (Cap. 312) for non-payment of irrigation rates due in respect of them and were purchased by the Crown, and on the 19th March, 1946, there were issued the two certificates of sale D2 and D3 vesting title to them in the Crown. Section 66 (2) of the Ordinance provides that on such a sale taking place a certificate substantially in the form given in Schedule II of the Ordinance shall be issued. The certificates D2 and D3 are substantially in that form, and it is clear from the provisions of section 66 (2), read with the terms of the relevant form of certificate, that on the issue of the certificates the said two allotments vested absolutely in the Crown free from all encumbrances. Although the certificates D2 and D3 were subsequently registered, purportedly under the provisions of the Registration of Documents Ordinance (Cap. 101), it was granted by learned Crown Counsel that the registration was not in accordance with the provisions of section 15 (1) (a) of that Ordinance and that they must, therefore, be deemed not to have been duly registered.

Notwithstanding the sale, the original owners purported to transfer the two lands for consideration by deed P1 of the 26th December, 1945, and the subsequent devolution of the title so disposed of appears from the deeds P2 to P6, under the last of which the plaintiff-appellant claims to have acquired title. All these deeds have been duly registered. P3 to P6 were executed subsequent to the issue of the certificates D2 and D3.

The case for the appellant is that the deeds in his chain of title prevail against the unregistered certificates D2 and D3 by virtue of section 7 (1) of the Registration of Documents Ordinance and it is on that basis that he filed this action against the Crown for declaration of title to the two lands and consequential relief. The learned District Judge dismissed the action with costs, and the present appeal has been filed against that order.

One of the questions canvassed at the trial and in appeal was whether the Crown is bound by the provisions of the Registration of Documents Ordinance. But this question, which does not appear to be covered by any previous authority, need not be considered as the appellants's claim must fail on another point of fundamental importance the decision of which, in my opinion, and also as conceded by learned counsel for the appellant, is fatal to the appeal.

To deal with that point immediately, it is clear that the provisions of section 7 (1) of the Registration of Documents Ordinance would not come into operation unless the appellant shows that the deeds in his chain of title, as well as the two certificates of sale, are from the same source, vide the case of *James v. Carolis*<sup>1</sup>. The effect of a certificate of sale vesting title absolutely and free from encumbrances was considered in *Nugawela v. The Municipal Council, Kandy*<sup>2</sup>. The question that arose there was whether a land sold for non-payment of municipal rates and purchased by the Kandy Municipal Council had vested in the Council

<sup>1</sup> (1914) 17 N. L. R. 76 at 81.

<sup>2</sup> (1933) 40 N. L. R. 166.

by virtue of a certificate of sale issued under the relevant provisions of law, free from any obligation to perform or commute certain services which governed the tenure of the land prior to the sale, and that question was answered in the affirmative by a bench of two Judges who, in doing so, dissented from an earlier decision of this Court (also of two Judges) in *Sivacolundu v. Noormaliya*<sup>1</sup>. For the purpose of the present case, however, it is not necessary to attempt to resolve the conflict between these two decisions as on a consideration of the relevant provisions of the Irrigation Ordinance (Cap. 312) it is possible to reach the conclusion that by virtue of the certificates D2 and D3 there came into existence an entirely new title in the Crown to the lands in suit which was not dependent on any transmissible interest which the proprietor of the land or other person had in them immediately prior to the sale.

Sub-section (1) of section 2 of that Ordinance (which has since been replaced by the Irrigation Ordinance, No. 32 of 1946) provides that an irrigation rate under the Ordinance with reference to any land to which it relates is a charge in favour of the Crown, and under sub-section (4) such charge "shall be binding on the land and every part thereof, and such land and every part thereof, and the proprietors of such land and every part thereof, shall be liable for the payment of the same, into who-soever hands the ownership, possession, tenancy or occupancy of such land or any part thereof under any circumstances may at any time pass, until the said charge shall be extinguished, and such charge shall have priority over all mortgages, hypothecations, encumbrances, and charges whatsoever, whether antecedent in date or otherwise, affecting the land". Section 62 provides for the seizure and sale of any land for default in the payment of rates due in respect of it. Sub-section (1) of section 66 deals with a sale to a purchaser other than the Crown and it provides that on the issue of a certificate of sale in the prescribed form the land shall vest in the purchaser free from all encumbrances whatsoever. Sub-section (2) of section 66 deals with a purchase on behalf of the Crown and in such a case, in terms of the prescribed certificate of sale, on the issue thereof the land would vest absolutely in the Crown free from all encumbrances. Section 67 deals with the cancellation of a sale of land purchased by the Crown on payment (at any time before re-sale to a third party) by or on behalf of the proprietor of the amount due in respect of the land, and it provides that on an endorsement being made by the Government Agent on a certified copy of the certificate which issued under section 66 (2) and on the registration of such endorsement in the office of the Registrar of Lands the land shall re-vest in the proprietor as though such sale had never been made. Section 68 provides for a re-sale of the land to a third party by a similar endorsement and it is important to note that on such an endorsement being registered in the office of the Registrar of Lands what is declared to vest in the purchaser is the right, title and interest which would have been acquired by him if he had purchased the land at the original sale. These provisions indicate that in the case of a sale of the land in the first instance to a purchaser other than the Crown only the right, title and interest to and in the land

<sup>1</sup> (1921) 22 N. L. R. 427.

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(free of all encumbrances) are transmitted, whereas in the case of a sale to the Crown the land itself vests in the Crown absolutely and free of all encumbrances.

In my opinion, as long as the title to the lands in suit remains vested in the Crown all previous titles must be regarded as wholly extinguished, or suspended, by operation of law, and a new title created in the Crown which is good against all persons. The position appears to be no different from a decree for partition of land which, it was held in *Bernard v. Fernando*<sup>1</sup>, creates a new title in the parties and which, though unregistered, prevailed over a subsequent registered conveyance by which one of the co-owners sold his undivided interests in the land prior to partition.

The appeal is, therefore, dismissed with costs.

SINNETAMBY, J.—I agree.

*Appeal dismissed.*

