

1955

Present : Basnayake, A.C.J., and Pulle, J.

MOHAMADU, Appellant, and MOHAMADUTHAMBY *et al.*,
Respondents

S. C. 366—D. C. Batticaloa, S167L

*Irrigation Ordinance No. 32 of 1946—Sections 57 and 58—Non-payment of rates—
“Defaulter”—Cancellation of certificate of sale—Person in whom title re-vests—
Irrigation Ordinance (Cap. 312), ss. 61, 66.*

For the purpose of irrigation rates payable in respect of an Irrigation Scheme the person whose name is on the register of proprietors is the one who is liable to pay the rates and if he does not pay the rates at the due time he is the defaulter.

Where land which is liable to the payment of irrigation rates is sold to the Crown for non-payment of irrigation rates, the title to it re-vests in the defaulter whose name was on the register at the time of the sale, if he subsequently obtains, under section 58 of the Irrigation Ordinance No. 32 of 1946, a cancellation of the certificate of sale on payment of the amount due.

Obiter : Section 58 of the Irrigation Ordinance No. 32 of 1946 does not apply to sales under the repealed Ordinance (Cap. 312).

APPPEAL from a judgment of the District Court, Batticaloa.

J. N. David, with *E. R. S. R. Coomaraswamy*, for the Defendant-Appellant.

C. Renganathan, with *P. Naguleswaram*, for the Plaintiff-Respondents.

July 14, 1955. BASNAYAKE, A.C.J.—

It is common ground that one Aliarpody was the original owner of the land which is the subject-matter of this action. He died leaving two sons, Meeralebbe and Sheriffthamby, who possessed the land. Thereafter in proceedings instituted in the Court of Requests of Batticaloa one Adambawa obtained a decree against Meeralebbe and Sheriffthamby and sold the land in execution and obtained a Fiscal's transfer therefor. Though an application was made for a writ of possession, no further steps appear to have been taken in that behalf. It is not disputed that the land in question is an allotment liable to the payment of irrigation rates

under the Pattipal Aru Scheme and that in 1927 it was sold for non-payment of irrigation rates under the provisions of the Irrigation Ordinance (Chapter 312) (now repealed by Ordinance No. 32 of 1946) and purchased by the Crown and a certificate under section 66 of that Ordinance vesting the land in the Crown was executed by the Government Agent on 21st February 1931.

The Crown continued to be the owner of the land till 7th March 1951 when the defendant's mother Seinambu daughter of Meeralebbe above-mentioned on whom the notice of the original sale for default of irrigation rates had been served obtained a cancellation of the certificate of sale having paid the amount due on 19th February 1951. The question is whether upon the cancellation of the sale in favour of the Crown the land re-vested in Seinambu the defaulter whose name appears to have been in the register kept under section 61 of the repealed Irrigation Ordinance. In cancelling the certificate the Government Agent purports to have acted under section 88 of the new Irrigation Ordinance No. 32 of 1946 although that section does not apply to sales under the repealed Ordinance. It provides that upon the payment by the defaulter or by any person on behalf of the defaulter of the amount due from the defaulter in respect of any land purchased on behalf of the Crown under section 87 the Government Agent shall cancel the sale by endorsement on a certified copy of the certificate and upon the registration of such endorsement such land shall re-vest in the defaulter. The land in question was not purchased under section 87 of the present Ordinance. The Government Agent had therefore no power under section 88 to cancel the certificate. Even if section 88 was applicable the Government Agent had no power on 7th March 1951 to cancel the sale as the amendment of section 88 effected by section 17 of Act No. 1 of 1951 authorises the cancellation of a certificate only if the defaulter pays the amount due within five years from the date of purchase of any land on behalf of the Crown. But as the trial had proceeded on the assumption that the cancellation of the certificate of sale on 7th March 1951 was valid we have decided this appeal on that basis.

It was contended that Seinambu did not come within the ambit of the expression defaulter in section 88. We are unable to uphold that contention. For the purpose of irrigation rates payable in respect of an Irrigation Scheme the person whose name is on the register of proprietors is the one who is liable to pay the rates and if he does not pay the rates at the due time he is the defaulter. In this case Seinambu's name appears to have been on the register at the time of the sale and she being the defaulter the property has vested in her. The defendant who claims by virtue of a transfer dated 8th December 1951 by Seinambu is now clothed with whatever rights vested in the transferor by the cancellation of the certificate of sale.

We therefore set aside the judgment of the learned District Judge and allow the appeal with costs.

PULLÉ, J.—I agree.

Appeal allowed.