

1942

Present : Howard C.J. and Soertsz J.

DE SILVA v. WEERAPPA CHETTIAR.

313—D. C. Negombo, 10,378.

*Registration—Document registered in wrong folio—Negligent entry by clerk—Document deprived of priority—Registration of Documents Ordinance ss. 7 and 15 (1).*

Where, owing to the negligent entry of a registering officer, a document of title is not registered in accordance with the provisions of section 15 (1) of the Registration of Documents Ordinance, the document is deprived of the priority conferred on it by section 7 of the Ordinance.

**A** PPEAL from a judgment of the District Judge of Negombo. The facts are fully stated in the judgment of Soertsz J. in *de Silva v. Weerappa Chettiar*<sup>1</sup>.

N. Nadarajah, K.C. (with him J. E. A. Alles), for the substituted defendants (8A to 8I), appellants.

H. V. Perera, K.C. (with him T. K. Curtis), for the plaintiff, respondent.

*Cur. adv. vult.*

September 30, 1942. HOWARD C.J.—

The case put forward by Mr. Perera has our sympathy but we feel we must find against him and in favour of the representatives of the eighth defendant. In coming to this conclusion we have had regard to the relevant sections of the Registration of Documents Ordinance (Cap. 101). In section 7 of the Ordinance it is provided that an instrument is void as against a subsequent instrument unless it is duly registered under the Ordinance. To find out the interpretation which must be given to the expression "duly registered" we must turn to sections 15 and 16 of the Ordinance. Section 16 provides that the registration of an instrument shall be effected by entering the prescribed particulars in the proper folio. Section 15 provides that an instrument, whether registered before or after the commencement of this Ordinance, shall not be deemed to be duly registered under this Chapter unless it is registered in accordance with the foregoing provisions of this section. The foregoing provisions of this section provide for registration in the same folio in which the previous dealings with the land have been registered or in a new folio with cross-references. Unfortunately for the plaintiff, his title was not registered in accordance with section 15 (1) and, therefore, his instrument is void as against the instrument on which the eighth defendant's representatives base their title. The plaintiff's instrument was not, therefore, duly registered.

The judgment of Wood-Renton C.J., in the case of *Cornelis v. Abeysinghe*<sup>1</sup>, cited by Mr. Perera, has no bearing on the facts of this case, inasmuch as it was given before sections 15 and 16 of the Ordinance formed part of the law.

In expressing our sympathy for Mr. Perera's client, we recommend to the notice of the Government the fact that the present position of the plaintiff is due to the negligent entry of his document of title in the Registration book.

There must, therefore, be judgment for the representatives of the eighth defendant. We make no further order as to costs.

SOERTSZ J.—I agree.

*Appeal allowed.*