Privy Council Appeal No. 78 *of* 1930.

H. W. Boyagoda - - - - - - - - *Appellant*

v.

D. J. B. Ferdinando and others - - - - - *Respondents*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND DECEMBER, 1931.

Present at the Hearing:
VISCOUNT DUNEDIN.
LORD BLANESBURGH.
LORD DARLING.

[*Delivered by* LORD BLANESBURGH.]

This is an appeal from a decree of the Supreme Court of the Island of Ceylon dated the 31st May, 1929, affirming a decree of the District Court of Colombo dated the 2nd August, 1928, whereby the appellant's action No. 19,983 against nine defendants, including the five respondents to this appeal, was dismissed with costs.

The action was brought by the appellant to have certain conveyances of lands made by the second, third and fourth defendants to the first three respondents, and certain further conveyances of portions of the same lands by these three respondents to the fourth and fifth respondents declared null and void, and for an order for the re-conveyance to the appellant of such portions of these lands as the respondents claimed the right to retain, with consequential relief.

The first four defendants were either formal or non-contestant, and they have now disappeared from the proceedings. The first three respondents—the fifth, sixth and seventh defendants—may for convenience be referred to as the Moratuwa Syndicate. The fourth and fifth respondents—the eighth and

ninth defendants—are sub-purchasers from the Syndicate with notice, as is alleged by the appellant, of the infirmity in its title and therefore in no stronger position against him in respect of the lands conveyed to them than the Syndicate itself.

The case is in its details one of the greatest complexity. But it has been unravelled with much patience and care by the Courts in Ceylon, where the learned Judges in their judgments have clearly shown that the ultimate issue between the parties is reduced to a short question of fact. Upon that question they have made concurrent findings. Their Lordships' task accordingly, in view of the rule by which they govern themselves in such circumstances, has been greatly simplified.

The lands in question, formerly lands of the appellant, but heavily and successively mortgaged by him, may for convenience be described as the Kempitikande group. They are specified in detail in schedules A to E annexed to the plaint. Schedule A is in two parts, part 2 consisting of 48 lots, of which lots 20 to 26 or some of them had been conveyed to the appellant's nominee before action brought; schedule B consists of 135 lots, whereof lots 1 to 23 inclusive or some of them had also been conveyed in like manner before action brought. With the lands in schedule D consisting of two specified estates, an estate known as Dompemulla, has been coupled throughout the proceedings. These three estates had also been conveyed to the appellant's nominee before action brought.

The appellant's case with regard to the whole Kempitikande group, put in the simplest terms, was that the Moratuwa Syndicate obtained conveyances of the properties upon trust, in the events which had happened, to reconvey them to the appellant. The case of the Syndicate, on the other hand, was that the entire interest of the appellant in the Kempitikande group was duly conveyed to the Syndicate absolutely for the consideration that there should be re-transferred to the appellant, free from all incumbrances, the 30 lots from schedules A and B and the two estates in schedule D, together with the estate of Dompemulla.

Upon the merits of these rival contentions which, in the interest of brevity, have been stated in the barest outline, the learned District Judge and the learned Judges of the Supreme Court were in complete agreement.

The result is compendiously stated by Mr. Justice Dalton delivering judgment in the Supreme Court. The learned Judge there says :—

> "On the main issue . . . therefore I am of opinion that the Trial Judge was correct in his conclusion that . . . the Moratuwa Syndicate . . . when they obtained conveyances of the Kempitikande group . . . did not obtain the conveyances without consideration or in trust for the plaintiff. No trust in respect of these conveyances has been satisfactorily proved and therefore the further issues based upon the alleged existence of that trust require no answer."

This further passage from the judgment of the same learned Judge sufficiently indicates the position of the appellant at the time, and the advantages accruing to him from the transaction as explained by the Syndicate and accepted by both Courts :—

> " In return . . . for the conveyance of Kempitikande to the Syndicate by his nominees, on a title in the plaintiff, be it remembered, which was by no means secure, to put it at the best, having regard to the Chetties' competing title, plaintiff obtained from the [Syndicate] after they had also acquired the Chetties' rights a good and unquestionable title to [the two estates in schedule D] apparently free from any burden, in the name of his nominees, it is true, but eventually to come to him. He entered into possession of them at once and sold them eventually for Rs. 82,500. In addition he has still to receive the various allotments I have mentioned above. The liabilities to the Chetties in respect of these properties were extinguished. The position of the Aitken debt " [Mr. Aitken was an earlier mortgagee] " is somewhat uncertain . . . but the plaintiff has not satisfied me that the possibility of his being called upon to pay this debt is a real one."

And before the Board no attempt was made to carry this last matter further.

The result, therefore, is clear. The findings are entirely concurrent : they dispose of the whole suit, and the appeal necessarily fails.

Their Lordships accordingly will humbly advise His Majesty that it be dismissed and with costs.

In the Privy Council.

H. W. BOYAGODA

v.

D. J. B. FERDINANDO AND OTHERS.

DELIVERED BY LORD BLANESBURGH.

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