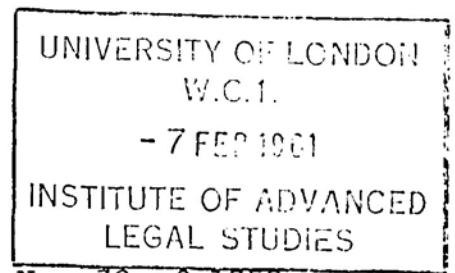


GLT G. 2. 28, 1960



IN THE PRIVY COUNCIL

No. 39 of 1959

FC 926

ON APPEAL FROM  
THE SUPREME COURT OF CEYLON

B E T W E E N :

THE LAND COMMISSIONER, Colombo  
Defendant-Respondent APPELLANT

- and -

1. M. LADAMUTTU PILLAI KATHIRKAMAN PILLAI  
of Bridge Street, Chilaw, Administrator  
of the Estate of Plaintiff-deceased  
Substituted-Plaintiff-Appellant  
RESPONDENT
2. W. A. DON ELARIS PERERA of Marawila  
Added-Defendant-Respondent  
RESPONDENT

CASE FOR FIRST RESPONDENT

1. This is an appeal from the Judgment of the Supreme Court of Ceylon dated the 31st January, 1958 allowing by a majority (Basnayake C.J. and Pulle J., K.D. de Silva J. dissenting) the appeal of the First Respondent (the Plaintiff at the trial) from the Judgment and Decree of the District Court (L.B. De Silva D.J.) dated the 13th November, 1953 dismissing the First Respondent's action with costs. p.76 p.66,70.

(2)

2. There is no material dispute about the facts in this case and the sole questions to be decided on this appeal are (a) whether upon the proper construction of Section 3(1)(b) of the Land Redemption Ordinance (No. 61 of 1942) in relation to the facts of this case the Appellant is entitled to acquire certain lands owned by the First Respondent, and (b) whether in any event the Court has jurisdiction to entertain a claim and to grant an injunction against the Appellant to restrain him from acting in breach of the provisions of the said Ordinance.

3. The Second Respondent was originally the owner of a number of different plots of land which are variously described in the Schedules to the different deeds exhibited in the Record. On the 30th September, 1925 by Mortgage Bond No. 391 the Second Respondent mortgaged approximately 150 acres on a primary mortgage for Rs. 50,000 to three Chettians hereinafter referred to respectively as Sockalingam, Suppramaniam and Arunasalam. Under the terms of this mortgage the Second Respondent bound himself to repay the mortgage debt on demand "to the said mortgagees or any one of them or their or any one of their attorneys or their heirs, executors, administrators and assigns." On the 8th April, 1930 by Mortgage Bond No. 533 the Second Respondent executed a further mortgage for Rs. 25,000 in favour of five Chettians, of whom two were Sockalingam and Suppramaniam and the other

'P1' p.125

'P2' p.131

(3)

three are hereinafter referred to respectively as Muthiah, Velayuthan and Sekkappa. The land mortgaged by this Bond included all the land covered by the previous Bond except approximately 20 acres and also included approximately 55 acres of land not included in the earlier Bond, so that this Bond took effect partly as a primary and partly as a secondary mortgage. Under this Bond as under the previous Bond the mortgage debt was repayable to the mortgagees or to any one of them. On the 8th March, 1931 by Mortgage Bond No. 2339 the Second Respondent executed a further mortgage for Rs. 20,000 in favour of Warnakulasuriya Elaris Dabarera Appuhamy, which took effect as a tertiary mortgage of lands included in Bonds Nos. 391 and 533, a secondary mortgage of lands included in Bond No. 533 only and a primary mortgage of certain other land.

'P3' p. 164

4. By Plaintiff in the District Court of Negombo dated the 31st January, 1933 (D.C. Negombo Case No. 7365) Sockalingam put Mortgage Bond No. 533 in suit, claiming judgment for the principal and interest due thereunder and in default of payment an order for judicial sale of the land comprised in the mortgage, and a further order that if the proceeds of such sale should not be sufficient to discharge such principal and interest, the Second Respondent should pay to Sockalingam the amount of the deficiency together with interest. On the 22nd June, 1933 a Decree was entered in favour of

'1D1' p. 215

'P4' p. 172

Sockalingam in D.C. Negombo Case No. 7365 as asked for in the Plaint, the sale of the land to take place in default of payment within four months from the date thereof.

'P5' p.181 5. By Deed of Transfer No. 4010 dated the 4th May, 1935 the Second Respondent for a consideration of Rs. 75,000 transferred the whole of his interest in the lands comprised in the Schedule thereto to Sockalingam and Sekkappa in the proportion of an undivided two-third share to Sockalingam and the remaining undivided one-third share to Sekkappa. The land comprised in this transfer was not precisely identical with the land mortgaged either  
p.125,131 by Bond No. 391 or by Bond No. 533, and in particular there were approximately 26 acres included  
p.131 in Bond No. 533 which were not included in this  
p.188 transfer. The attestation to this transfer by the Notary Public stated that the full consideration was set off in full satisfaction of the claim and costs due in D.C. Negombo Case No. 7365 and the  
p.125 principal and interest due on Mortgage Bond No. 391, that the Second Respondent undertook to release  
p.164 the lands transferred from Bond No. 2339, and that a motion for satisfaction of the Decree in D.C. Negombo Case No. 7365 would be filed and Bond  
p.172 No. 391 discharged. In fact it was not until the  
p.163 6th November, 1941 that Sockalingam by his Proctor moved that satisfaction of the Decree be entered in D.C. Negombo Case No. 7365 on the ground that the Second Respondent had paid the Plaintiff's

(5)

(Sockalingam's) claim and costs. Satisfaction of the Decree having been entered, the Court discharged and cancelled the Bond. p.143 11.1-6

6. On the 16th September, 1940 the business partnership between Sockalingam, Velayuthan, Muthiah and Suppramaniam was dissolved, and as part of the distribution of the partnership assets as between the partners on the 13th October 1940 by Deed No. 1387 Sockalingam transferred to the heirs of Muthiah an undivided one-third share of the land which he had acquired under the Transfer Deed No. 4010, and by Deed No. 1375 Sockalingam transferred his remaining one-third share to Velayuthan. By Deed No. 761 dated the 24th February, 1945 Sekkappa, Velayuthan and the heirs of Muthiah as vendors for a consideration of Rs. 75,000 transferred to the father of the First Respondent the entire interest in the land set out in the Schedule thereto, which included a piece of approximately 42 acres known as Keeriyankalliya Estate. All the land included in this transfer had been comprised in Mortgage Bonds Nos. 391 and 533 but there were lands in each of the said Mortgage Bonds which were not included in this transfer. The father of the First Respondent entered into the possession of these lands in 1945 and he or his son, the First Respondent, have been in possession every since. p.189 1.12 'P7' p.188 'P6' p.197 'P8' p.209 p.56 1.30 p.57 1.18

7. Before action brought the First Respondent's father was informed by the Appellant that the lands

p.17

which he had bought were lands which the Appellant was authorized to acquire under the Land Redemption Ordinance and that he was taking steps to acquire Keeriyankalliya Estate, and by Plaint dated 23rd July, 1949 the father of the First Respondent commenced

THE PRESENT SUIT

against the Attorney-General of Ceylon and the Appellant, claiming an injunction against each or either of them restraining them from taking steps under the Land Redemption Ordinance to acquire the lands which he had bought by Deed No. 761.

p.21  
para.5

8. By their Answer dated the 2nd March, 1950 the Attorney-General and the Appellant pleaded - (a) that on or about 16th May, 1945 the Second Respondent had applied to the Appellant for the Redemption of the land bought by the First Respondent; (b) that on or about the 12th May, 1947 the Appellant under the provisions of Section 3(4) of the Land Redemption Ordinance made his determination to acquire the Keeriyankalliya Estate, and that notification of such determination was conveyed to the First Respondent on the 7th February, 1949; (c) that at the material dates the said land was and is land of the description contained in Section 3(1)(b) of the said Ordinance; (d) that the Appellant's determination to acquire the said Estate under the provisions of the said Ordinance was final and conclusive and could not be questioned in these proceedings, and the Court had, therefore, no jurisdiction to entertain the present action.

(7)

9. On the 8th April, 1951 the First Respondent's father died intestate and on the 9th March, 1953 Letters of Administration were granted to the First Respondent. On the 11th March, 1953 by consent the First Respondent was substituted as the Plaintiff in the action and the Second Respondent was joined on his own application as the Third Defendant.

p.45 L. 31

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p.51

10. The action was tried in the District Court on the 30th September and the 6th November, 1953. The First Respondent gave evidence in which he outlined the history of the land in question and said that it was coconut land which had been farmed by his father and which was now being farmed under his ownership. On behalf of the Appellant the Assistant Land Commissioner, Colombo, testified that on the 12th May, 1947 the Land Commissioner had decided to acquire the said Estate, that he was satisfied that the requirements of Section 3(1)(b) of the Ordinance were present and that the Commissioner had made a decision under Section 3(1)(b). He said that on the 5th February, 1947 the First Respondent had filed written objections, which had been considered, but that the First Respondent had not been heard personally. The Second Respondent on his own behalf also gave evidence at the trial. The First Respondent's father had alleged in his Plaint that he was a bona fide purchaser for value, which the Second Respondent had denied in his Answer, and in his evidence the Second Respondent said that when he heard the First Respondent's father was going to

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p.56-7

p.58

p.61

p.19 Para. 12

p.53 Para. 6

p.61 1.11 buy the land he informed him that he (the Second Respondent) was going to get it back. It appears that the learned Trial Judge did not accept the Second Respondent's evidence in this respect in that in his Judgment he stated that the First

p.67 1.32 Respondent "is no doubt a purchaser for valuable consideration. I am prepared to discount the evidence of the Third Defendant that he informed the Plaintiff before his purchase that he would take steps under this Ordinance to redeem his lands. The Third Defendant is an interested witness and as the Plaintiff is dead the Third Defendant cannot be contradicted." The learned Trial Judge so found in his Answer to Issue No. 8 (see below). However, the learned Trial Judge also said that there was nothing in the Ordinance

p.67 1.30 to exclude its application to a bona fide purchaser for value. The Second Respondent also said in

p.61 1.16 evidence that the mortgagees under Bond No. 391 were Sockalingam, Suppramaniam and Sekkappa. He said that Arunasalam's Mudalale was Sekkappa. But the learned Trial Judge found that the mortgagees

p.66 1.16 in Bond No. 391 were, as stated therein, Sockalingam, Suppramaniam and Arunasalam.

11. Section 3(1) of the Land Redemption Ordinance (No. 61 of 1942) on the 12th May, 1947 read as follows :-

"3(1) The Land Commissioner is hereby authorized to acquire on behalf of Government the whole or any part of any agricultural land, if the Land



(9)

Commissioner is satisfied that the land was, at any time before or after the date appointed under Section 1, but not earlier than the 1st day of January 1929, either -

- (a) sold in execution of a mortgage decree, or
- (b) transferred by the owner of the land to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was immediately prior to such transfer, secured by a mortgage of the land."

With effect from the 3rd July, 1947 by virtue of the Land Redemption (Amendment) Ordinance (No. 62 of 1947) Section 3(1)(b) was amended so as to read as follows :-

"3(1) The Land Commissioner is hereby authorized to acquire on behalf of Government the whole or any part of any agricultural land, if the Land Commissioner is satisfied that the land was, at any time before or after the date appointed under Section 1, but not earlier than the 1st day of January 1929, -

- (a) sold in execution of a mortgage decree, whether or not that land was subject to the mortgage enforced by that decree, or
- (b) transferred by its owner or his executors or administrators to any other person or the heirs, executors or administrators of any other person in satisfaction or part.

(10)

satisfaction of a debt which was due from that owner or his predecessor in title to that other person and which was secured by mortgage of that land subsisting immediately prior to the transfer, or

- (c) transferred by its owner or his executors or administrators to any other person, at the request of a mortgagee of that land, in satisfaction or part satisfaction of a debt which was due from that owner or his predecessor in title to that mortgagee and which was secured by a mortgage of that land subsisting immediately prior to the transfer.

The preceding provisions of this sub-section shall not apply to such undivided shares of any agricultural land as were sold or transferred within the period specified in those provisions and in the circumstances and manner set out in any of the preceding clauses (a), (b), or (c), but, where those shares were converted after the sale or transfer into anydivided allotment or allotments by a partition decree of any court or by a duly executed deed of partition, those provisions shall apply to such allotment or allotments, and accordingly the word 'land' occurring in this Ordinance shall be construed to include such undivided shares which have been converted after sale or transfer as aforesaid into any divided allotment or allotments."

(11)

Section 3(4) of the Ordinance, which is also material to this appeal, is as follows :-

"(4) The question whether any land which the Land Commissioner is authorized to acquire under sub-section (1) should or should not be acquired shall, subject to any regulations made in that behalf, be determined by the Land Commissioner in the exercise of his individual judgment; and every such determination of the Land Commissioner shall be final."

Section 9 of the Ordinance provides that "Land Commissioner" means the officer for the time being appointed to be Land Commissioner under the Land Development Ordinance (Cap. 320) and that "mortgage decree" means a decree entered by a Court in an action to enforce payment of a mortgage by a judicial sale of the mortgaged property.

12. On the 13th November 1953 the learned trial Judge delivered his reserved judgment. He held on the construction of the Ordinance that for the purposes of Section 3(1)(b) a mortgage debt was still due despite the entering of a Hypothecary Decree and that it was immaterial that the transfer was in satisfaction of two mortgage debts or that the whole of the land comprised in the mortgages was not included in the transfer. On the strength of these conclusions he held that the Land Commissioner was empowered to order the acquisition of the land and accordingly dismissed the action with costs. He did not refer to the arguments

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p.67 L.41

raised by counsel for the First Respondent that there was no debt due to Sekkappa and that part of the consideration for the transfer was the discharge of a debt owing to a third party. On the question of jurisdiction he held that the Land Commissioner could be sued as such and that the Court had jurisdiction to decide the competency of the Land Commissioner's acts and whether or not the Land Commissioner had correctly formulated the question which he had then to answer in the exercise of his discretion. Counsel for the First Respondent had conceded that the action was not maintainable against the Attorney-General and the learned trial Judge so found. The issues framed during the trial and the answers given by the learned District Court Judge are as follows :-

p.68 l.16

p.68 l.37

p.65 l.5

p.68 l.1

Questions  
p.54,57.  
Answers  
p.69.

1. Is the land in question capable of acquisition under section 3 of the Land Redemption Ordinance, No. 61 of 1942? - Yes.
2. Did the Land Commissioner on or about 12.5.47 make a determination under Section 3(4) of the Land Redemption Ordinance, No.61 of 1942, that Kiriyankaduru (sic) Estate be acquired? - Yes.
3. Was the said estate on or about 12.5.47 a land of the description contained in Section 3(1)(b) of the Land Redemption Ordinance, No.61 of 1942? - Yes.
4. Is the Land Commissioner's determination with regard to the acquisition of Kiriyankaduru

Estate final? - His decision on facts is final the question of law whether he had authority to acquire a particular land is subject to review by this Court.

5. If so can the correctness of the said determination be questioned in these proceedings? - Vide answer to Issue 4.

6. Is plaintiff entitled to proceed against the 1st Defendant as representing the Crown to obtain an order of Injunction against the Crown? - No.

7. Can plaintiff maintain this action against the 2nd Defendant as the Land Commissioner without suing the officer who made the order in question by name? - Yes.

8. Is the plaintiff a bona fide purchaser for value from the original transferees of the said lands from the 3rd Defendant? - Yes.

9. If so, is the 2nd Defendant empowered to acquire lands from him? - Yes.

13. On the 27th November 1953 the First Respondent filed a Petition of Appeal to the Supreme Court. The appeal was argued on the 20th, 21st, 22nd, 25th, 26th, 27th, 28th and 29th November, 1957, and the Judgment of the Supreme Court was delivered on the 31st January 1958. Basnayake C. J. and Pulle J. were in favour of allowing the appeal, K.D. de Silva J. was in favour of dismissing the appeal,

p. 71  
p. 76, l. 17  
p. 76 et seq

p.109 and accordingly by Decree of that date the appeal was allowed with costs in both Courts and an injunction was issued restraining the Defendants jointly or in the alternative from taking steps under Ordinance No. 61 of 1942 to acquire the lands described in the Schedule to the Decree.

p.81,  
ll.29-37 14. Basnayake C. J. held that the Land Redemption Ordinance since it encroaches seriously upon the property rights of the subject should be strictly construed and that a construction should be preferred in favour of the subject and against the acquiring authority; that Section 3(1)(b) did not apply where the lands transferred were some only of the lands secured by the mortgage; that the transfer in this case was not of land or lands but of undivided shares in land; and that the transfer to Sekkappa was not in satisfaction or part satisfaction of a debt due from the Second Respondent to Sekkappa, such debt having ceased when Sockalingam issued proceedings or got judgment against the Second Respondent. The learned Chief Justice also held that the Land Commissioner could be sued nomine officii, that this action could also be maintained against the Attorney-General, and that the Court had jurisdiction to inquire whether the Land Commissioner had exceeded his powers under the Ordinance and to grant an injunction and that he had so exceeded his powers. Palle J. gave substantially the same reasons as the learned Chief Justice for upholding the First Respondent's claim.

p.81,  
ll.1-25

p.82,  
ll.14-20  
p.82, l.21  
p.84, l.20

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(p.91, l.23

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(p.97, l.21  
p.106

In his dissenting judgment K.D. de Silva J. adopted a different construction of the Ordinance and held that it was not necessary that the land transferred should be coextensive with the land secured by the mortgage, that the debt to Sekkappa was still due under Bond No.533 and that Bonds Nos.391 and 533 ceased to be effective only on the execution of the transfer. He did not refer to the argument that the transfer was not of land in its entirety but only of undivided shares.

p.102

p.104,L.1

p.104,L.32

p.104,L.40

15. On the 25th February 1958 the Appellant applied to the Supreme Court for Conditional Leave to Appeal to the Privy Council, which was granted on the 25th August 1958. By Decree dated the 3rd October 1958 the Appellant was granted Final Leave to Appeal.

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p.119

p.124

16. The First Respondent humbly submits that the Appeal of the Appellant should be dismissed and that the Appellant should be ordered to pay the costs thereof and that the Judgment and Decree of the Supreme Court of Ceylon dated the 31st January 1958 should be affirmed for the following among other

#### R E A S O N S

- (1) Because the land was not transferred within the meaning of Section 3(1)(b) of the Land Redemption Ordinance in that only undivided shares in the land were transferred to different persons.

- (2) Because the land was not transferred in satisfaction or part satisfaction of a debt but for a consideration of Rs. 75,000 and/or an undertaking by the Second Respondent to release the land from Mortgage Bond No.2339.
- (3) Because the land was not transferred to any other person in satisfaction or part satisfaction of a debt due from the owner to such person in that there was no debt due from the Second Respondent to Sekkappa.
- (4) Because the land was not transferred to any other person in satisfaction or part satisfaction of a debt due to such person but in satisfaction of distinct debts to distinct persons.
- (5) Because the land was not transferred in satisfaction or part satisfaction of a debt in that the debt due from the Second Respondent under Mortgage Bond No. 533 had been merged in the Judgment in D.C. Negombo Case No.7365..
- (6) Because, assuming that the land was transferred in satisfaction or part satisfaction of a debt, such debt immediately prior to the transfer was not secured by a mortgage in that the Mortgage Bond No. 533 was extinguished by the Judgment in D.C. Negombo Case No. 7365. or by the failure to execute such judgment and the lapse of the thereafter.



- (7) Because the debt due under Mortgage Bonds Nos. 391 and 533 was not secured by a mortgage of the land transferred but by mortgages partly of the land transferred and partly of other lands.
- (8) Because the Courts of Ceylon have jurisdiction both to entertain a claim against the Appellant for the purpose of deciding whether land acquired or proposed to be acquired by the Appellant under the Land Redemption Ordinance is land to which Section 3(1)(b) of the Ordinance applies and also to issue an injunction against the Appellant restraining him from taking steps to acquire land to which the said Section does not apply.
- (9) Because once land has been transferred by a transferee to a third person or persons there is no longer any power to acquire such land under the said Ordinance.
- (10) Because in the alternative there is no such power once the transferee has transferred such land without the intention to defeat the provisions of the said Ordinance.
- (11) Because in the further alternative there is no such power provided that such third person has acquired such land as a bona fide purchaser for value or in ignorance of the fact that such land has been the subject of a transfer within the meaning of the said Section 3(1)(b) of the said Ordinance.

(18)

(12) Because the decision of the Supreme Court was right for the reasons given in the majority Judgments and ought to be affirmed.

Frank Soskice.

Joseph Dean.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME  
COURT OF CEYLON

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Added-Defendant-Respondent  
RESPONDENT

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CASE FOR THE <sup>as Respondent</sup> APPELLANTS

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*Respondent*