

1929

MAUNG
SHWE AN
v.
MA THE NU
AND OTHERS.

HEALD
AND
MYA BU, JJ.

other High Courts of India were rightly decided is clearly a question of law and in view of the number of such cases occurring in this country and the importance of the legal principles involved it seems to us to be a material question of law.

We therefore grant a certificate that as regards amount or value and nature the case fulfils the requirements of section 110 of the Code.

Costs in respect of this application will abide the final decision of the appeal, advocate's fee in this Court to be five gold mohurs.

[The applicant failed to furnish security within the requisite time, the appeal was rejected.]

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Apr. 2.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Mya Bu.

P.L.T.A.R. CHETTYAR FIRM

v.

MAUNG KYAING AND ANOTHER.*

Government leasehold land—Transfer by lessee by registered instrument—Transferee's neglect to obtain possession, mutation of names, and lease document—Lower Burma Town and Village Lands Act (Burma Act IV of 1898), ss. 29, 34—Default of Registering Officer to inform Revenue Officer, no excuse for negligence of purchaser—Transfer by original lessee as ostensible owner—Purchaser from original lessee, how far put on inquiry—Transfer of Property Act (IV of 1882), s. 41.

Where a purchaser by a registered instrument of Government leasehold land from the original lessee allows (a) such lessee to remain in possession of the land, (b) the land to stand in the name of the lessee in the Government records, (c) the title-deed, viz., the document of lease to remain with the lessee, he acts negligently and must be taken to consent to the original lessee being the ostensible owner. Such negligent purchaser cannot throw the blame on the Registering or the Revenue Officers for default on their part to notify the transfer. It is the purchaser's business to see to the mutation of names. A

* Letters Patent Appeal No. 108 of 1928 from the judgment of the High Court in Civil Second Appeal No. 732 of 1927 reported at 6 Ran. 643.

bonâ fide purchaser of the land from the ostensible owner in possession under such circumstances cannot reasonably be expected to look beyond the lease itself, and his vendor's possession, and is not guilty of any default such as would deprive him of the rights given by s. 41 of the Transfer of Property Act.

Maung Kyaing and another v. P.L.T.A.R. Firm, 6 Ran. 643—*confirmed*.

Clark for the appellant.

Kya Gaing for the respondents.

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HEALD and MYA BU, JJ.—This is an appeal from the judgment of a single Judge of this Court in Second Appeal No. 722 of 1927, the Judge who passed the judgment having declared that the case is a fit one for appeal under the provisions of Clause 13 of the Letters Patent constituting this Court.

The short facts are as follows :—

One Ma Gun held from Government a lease of a holding of Town land in Pegu Town and transferred her lease of that land to the present appellants by registered deed, but appellants never took any steps to have their names entered in the roll of town lands as transferees of the lease, which remained in the rolls in the name of Ma Gun. Appellants then transferred the lease to one Ma Thein Yin and Ma Thein Yin got her name entered in the rolls as transferee of the lease. In the year 1923 Ma Thein Yin transferred the lease back to appellants by registered deed but appellants did not obtain possession of the document of lease and did not get their names entered in the rolls as transferees. Subsequently Government decided to divide the lands in that part of the town into house-sites and to lay out roads, and Ma Thein Yin, as being the registered lessee, was approached and agreed to surrender the lease and to receive instead new leases for eight separate house sites into which part of the land covered by the original lease was divided, the remainder of that

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land being reserved by Government for roads. Ma Thein Yin then transferred the lease of one of the house sites to the present respondents, Maung ~~Kyaing~~ and Ma Mya Kin, by registered deed, and respondents got their names entered in the rolls as transferees of the lease.

Appellants on the strength of the transfer of the original lease by Ma Thein Yin to them sued respondents for possession of the house site.

This Court found that appellants were estopped from asserting their title to the lease in favour of respondents because they failed to obtain the original lease from Ma Thein Yin or to get their names entered in the town lands rolls as transferees of that lease, and because they stood by and allowed respondents to build a house on the land when they had notice that a lease in derogation from their rights had been made by Government and had been transferred to respondents.*

Appellants appeal from that decision on grounds that respondents were negligent in failing to enquire into Ma Thein Yin's title, that in view of that failure respondents could not be in the position of *bonâ fide* transferees for consideration without notice from an ostensible owner, that there was no estoppel against them, that respondents had notice, actual or constructive, of their title, that if respondents had made proper enquiry they would have found that the land covered by the lease transferred to them formed part of the land covered by the earlier lease which was in Ma Thein Yin's name and that they ought to have enquired how Ma Thein Yin came to obtain the subsequent leases of the house-sites, that Ma Thein Yin was not in fact an ostensible owner of

* (1928) 6 Ran. 643—Ed.

the property and that the fact that Ma Thein Yin was entered in the rolls as lessee of the lands was not due to their negligence.

It is clear that if respondents had enquired they would have found that the lease which Ma Thein Yin transferred to them was a lease recently made by Government to Ma Thein Yin, and that if they had gone further they would have found that Ma Thein Yin was the registered lessee under the original lease which covered those lands. There can, in our opinion, be no doubt that Ma Thein Yin was an "ostensible owner" of the property, but appellants' main contention is that she was not an ostensible owner with their consent, express or implied, or by reason of any default on their part. They say that the default was on the part of the Registering Officer or the Revenue Officer in charge of town-lands, because under section 29 of the Town Lands Act it was the duty of the Registering Officer who registered the transfer of the lease by Ma Thein Yin to them to send to the Revenue Officer a true copy of the entries in the indexes of the registration registers relating to the transfer. It is true that there was probably some default on the part of the Registering Officer or the Revenue Officer, but the fact remains that appellants have allowed the lands to remain in Ma Thein Yin's name since 1923. They could have applied at any time for mutation of names and the Act contains provision in section 34 for such mutation. Further, in addition to allowing the lands to stand in Ma Thein Yin's name, they allowed the title deed in the shape of the document of lease to remain in Ma Thein Yin's possession and they allowed Ma Thein Yin to remain in occupation of the land. It seems clear therefore that Ma Thein Yin was ostensible owner of the property by reason of their neglect to take the ordinary precautions which

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a transferee of a lease of town-lands ought to take and that their consent to Ma Thein Yin's position as ostensible owner must be implied from their acquiescence and from their failure to take reasonable precautions.

We are not satisfied that in the circumstances of this particular case where the land had recently been laid out into house-sites by Government and leases had been issued by Government it would be reasonable to expect a transferee of one of the leases so issued to look beyond the lease itself, and in a case like the present, where if he had made further enquiries, he would have found that his transferor who was in possession of the property at the time of the transfer, had prior to the issue of the lease transferred been in possession of the property under an earlier lease, that his transferee was the registered lessee under that earlier lease, and that she had actually remained in possession of the document evidencing that earlier lease until the issue of the new leases, the transferee who looked merely at the lease recently issued by Government and at his transferor's possession of the land was guilty of any default such as would deprive him of the rights given by section 41 of the Transfer of Property Act.

We therefore see no reason to interfere and we dismiss the appeal with costs, advocate's fee for this appeal to be ten gold mohurs.