

## APPELLATE CIVIL.

*Before Sir Guy Ruddle, Kt., K.C., Chief Justice, and Mr. Justice Brown.*

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Jan. 30,

K. V. GALLIARA

v.

U THET.\*

*Negligence of mortgagee—Faulty description of property in mortgage-deed—Mistake made by Registration Office due to faulty description—Absence of mortgaged property from appropriate index—Purchase of property without notice of mortgage—Transfer of Property Act (IV of 1882), s. 41—Registration Act (XVI of 1908), ss. 21, 22.*

A mortgage deed in favour of the respondent gave a proper description of properties in Insein, but a short and faulty description of three distinct pieces of property situate in Rangoon. One of them was situate in Block K<sub>2</sub>, and the other two in Block I<sub>1</sub> and I<sub>2</sub> respectively: the description did not show which lot numbers referred to which block numbers. The Registration Office copying from the deed entered the properties as in Blocks 9.K<sub>2</sub>, 10.I<sub>1</sub> and 10.I<sub>2</sub>, the figure 1 being substituted by the office for the letter I. In consequence the properties in Block I<sub>1</sub> and I<sub>2</sub> could not be traced in the Registration Indexes for those blocks. Appellant subsequently purchased from the mortgagor the property in Block 10-I<sub>2</sub> apparently free from incumbrances. He searched in the Registration Office and obtained from the mortgagor the title-deeds which were with another mortgagee when the respondent took his mortgage.

*Held*, that the mortgage deed of the respondent was faulty and did not comply with the requirements of s. 21 of the Registration Act, but nevertheless it could be registered, having regard to the provisions of s. 22 of the Act. The mistake of the Registration Office was primarily due to the grossly careless way in which the mortgage deed was drawn up and the property described. This enabled the mortgagor to hold himself out to the appellant as the ostensible owner of the property and therefore the appellant who acted *bona fide* took that property without being affected by the mortgage.

*Baij Nath v. Sheo Sahoy*, 18 Cal. 556—*distinguished*.

*Pulkar* for the appellant.

*Lambert* for the respondent.

RUTLEDGE, C.J., and BROWN, J.—The respondent, U Thet, brought a suit on a mortgage document against one U Tin and joined the appellant as a subsequent transferee. There were various properties

\* Civil First Appeal No. 204 of 1928 from the judgment of the Original Side in Civil Regular No. 290 of 1927.

set forth as mortgaged in the mortgage deed, but we are concerned in this appeal with only one of these properties, the property known as Lot No. 51, Block 10-I<sub>2</sub> in the Town of Rangoon.

The mortgage sued on is dated the 25th of June 1924 and the appellant bases his claim on a registered sale deed dated the 9th of February 1925. He claims that his title should be preferred to the title of the respondent under the mortgage deed on the ground of gross negligence on the part of the respondent whereby he was, *bonâ fide*, led to believe that the land was free from incumbrances when he made his purchase. The learned trial Judge has decided that the appellant has not established gross negligence on the part of U Thet, and has given a mortgage decree against this property as well as against the other properties mortgaged. The appellant claims that the decree so far as this property is concerned is not justified. He raises a number of grounds in appeal but the main ground is that the respondent, U Thet, was guilty of gross negligence and was, therefore, estopped from denying the validity of the appellant's title.

The body of the mortgage deed simply sets forth the general terms of the mortgage and leaves the description of the properties mortgaged entirely to the schedule. In the schedule the properties are described serially.

Serial No. 1 is described as:—

A piece of paddy land being Holding No. 315 of 1922-23 situate in Kyaikasan, Bauktaw Kwin, Kambe Circle, Insein Township, Insein District and measuring 0·13 acres.

Serial No. 2—

A piece of garden land being Holding No. 316 of 1922-23, measuring 4·28 acres and situate

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Insein Township, Insein District.

Serial No. 3—

Leasehold land in Pazundaung Circle, Rangoon  
in Blocks 9-K<sub>2</sub>, 10-I<sub>1</sub> and 10-I<sub>2</sub>, being 2nd  
class Lots Nos. 16, 17, 78 and 51 of the  
Rangoon Development Trust.

Serial No. 4—

All buildings, fixtures, trees and plants standing  
thereon.

The first two items consist of comparatively small  
properties and are each of them described in great  
detail. Item No. 3, however, which contains no less  
than three entirely different pieces of property in  
Rangoon Town, contains one short description of all  
these pieces of property. The first piece of property  
mentioned therein is situate in Block K<sub>2</sub> whereas the  
other two pieces are in Blocks I<sub>1</sub> and I<sub>2</sub> respectively.  
And the description does not show which lot numbers  
refer to which Block numbers.

It appears that registered documents in Rangoon  
are indexed in accordance with the Block numbers  
of properties to which they relate. Thus, all properties  
in Block K<sub>2</sub> can ordinarily be traced in the  
index by referring to the entries in the Register  
under K<sub>2</sub>, and similarly properties in Block I<sub>1</sub> or I<sub>2</sub>  
can be traced by referring to entries under I<sub>1</sub> or I<sub>2</sub>.  
But when the document in suit was registered no  
entry whatever was made in this index under Blocks  
I<sub>1</sub> and I<sub>2</sub>. This omission was clearly due to the  
manner in which the schedule of the document was  
drawn up. A copy of the schedule taken from the  
copy of the document in the Registration Office  
makes that clear. There the property is shown as  
“Blocks 9.K<sub>2</sub>, 10.I<sub>1</sub> and 10.I<sub>2</sub>, 2nd class Lots Nos.  
16, 17, 78 and 51”. This clearly does not shew any

of the properties to be in Block I<sub>1</sub> or I<sub>2</sub>, the figure "1" having in each case been substituted for the letter "I". It is stated on behalf of the appellant that search was made in the index before the appellant purchased the property and that the index did not disclose the present mortgage. This fact is not disputed, nor is it suggested that the appellant was in any way negligent in not making a further search.

It is admitted that the method employed in searching the registration records in this case was the method ordinarily employed by advocates and pleaders in Rangoon. It is true that there is another index which could have been searched, the personal index, but, in view of the similarity of Burmese names, that would admittedly have been a very laborious process, and is not the procedure which is ordinarily followed. Had the index been properly written up, it is clear that the appellant would have discovered the existence of this mortgage before purchasing the property.

The learned trial Judge has found this to be the case and he has also found that there has been negligence, but he holds the negligence to have been on the part of the officers or clerks of the Registration Office and not on the part of U Tin the defendant, or his pleader.

Under section 21 of the Registration Act, no non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same; and "houses in towns shall be described as situate on the north or other side of the street or road (which should be specified), to which they front, and by their existing and former occupancies and by their numbers if the houses in such street or road are numbered".

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By Rules issued by the Local Government under section 22 of the Act, the description of lands in towns must include the block, division and the holding number of the block. So far as the description of the house is concerned in the present case, it is clear that the requirements of section 21 of the Registration Act have not been complied with. The number of the blocks were all classed together in one short description, and all the buildings were given one comprehensive description as "buildings, fixtures, trees and plants standing thereon". It seems clear, therefore, that the requirements of the Registration Act were not properly complied with. This is not in itself sufficient to disentitle the document to be registered as section 22 provides that if the description is sufficient to identify the property the failure to comply with the provisions of sections 21 and 22 will not disentitle the document to be registered. Although the description given in the schedule to the document is exceedingly meagre, from a very careful study of the document it would have been possible to discover that the property now in suit was mortgaged.

It has been urged on behalf of the appellant that on account of the faulty description we should hold that there has not really been any registration at all with regard to this property, and that the mortgage as regards this property is, therefore, invalid; and we have been referred to the case of *Baij Nath Tewari v. Sheo Sahoy Bhagut* (1). In that case it was held that the registration of the document was invalid, but the facts of that case are not similar to the facts of the present case. It was not there merely a question of misdescription. The description given in the document in that case was directly misleading. We are not satisfied that the misdescription in the present case was so complete

(1) (1891) 18 Cal. 556.

as to disentitle the document to be registered. It does not seem to us, however, that this necessarily concludes the matter. There can be no doubt that the description of the property given in the document is not such a description as it is reasonable to expect in such documents, and it is also clear that the failure to give a more satisfactory description is responsible for the failure to enter the mortgage of this particular piece of land in the index under Block I<sub>2</sub>. The description in the schedule shows four 2nd class lots Nos. 16, 17, 78 and 51 as being situate in Block 9.K<sub>2</sub>, 10.I<sub>1</sub>, and 10.I<sub>2</sub>. The learned trial Judge points out that the mistake was due in part to the fact that the letter "I" is used for denoting blocks in Rangoon and that the letter "I" is exceedingly liable to be mistaken for the figure "1" as has actually happened in this case. But it is clear that the use of the letter "I" would have led to no mistake whatever had the proper description been given in the schedule and had the word "Block" been used in front of "10.I<sub>1</sub>," and of "10.I<sub>2</sub>". The manner in which the schedule is drawn up suggests strongly that all the items of property shown in serial No. 3 comprised one piece of property, and no satisfactory explanation has been given as to why each of these pieces of property was not separately and fully described as was done in the case of serial Nos. 1 and 2. It appears that at the time the mortgage document was executed the mortgagor was in custody on a charge of murder, and it is suggested that that was why the document was drawn up in such an unsatisfactory fashion. The pleader who acted for the mortgagor has given evidence and admits that no title-deed was given to him. No explanation is offered as to why the title deeds were not produced. We can see no reason why even though mortgagor was in custody it should have been impossible to draw up a description of the property in proper detail. In fact, it

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is alleged on behalf of the respondent that all the information required as to the property is actually in the document itself, and the fact that the mortgagor himself was in custody cannot explain away the negligence of the lawyer in not using the information at his command in such a way as to make the matter intelligible to the ordinary reader of the document. The clerks in the Registration Office are not trained lawyers and it is no part of their duty to study documents presented to them carefully for the purpose of considering what their legal meaning may be. It seems to us that with a description such as is given in the schedule in the present case, mistakes such as have occurred in the registration office were only to be expected, and, in our opinion, the failure to make a proper entry in the registration index was primarily due to the grossly careless way in which the deed was drawn up and the property described.

It must be borne in mind that at the time this document was drawn up, the mortgagor produced no title-deeds whatsoever. At the time of the mortgage, the deeds in question were with a previous mortgagee, and it has been contended on behalf of the respondent that however careless the plaintiff may have been in not requiring the production of the title-deeds before accepting the mortgage, the title-deeds could not have been procured even if they had been enquired after. That may be so; but in the absence of taking of the ordinary precaution of securing the possession of title-deeds when taking a mortgage of property it was obviously all the more incumbent on the mortgagee to see that the registered mortgage deed was properly drawn up in such a way that a third person making a search in the Registration Office for any transactions with regard to the property could not be misled. In the circumstances of the case we are of opinion that

the manner of drawing up the registered deed did amount to gross negligence and that by this negligence on the part of the mortgagee the mortgagor was enabled to hold himself out to the appellant as the ostensible owner of the property mortgaged.

It has not been suggested that the purchase by the appellant was not in good faith ; nor is it suggested that the appellant did not take reasonable care before making the purchase to satisfy himself as to the vendor's title. We are, therefore, of opinion that the principles laid down in section 41 of the Transfer of Property Act apply to this case and that the transfer of the property to the appellant was a valid transfer and was not affected by the mortgage in favour of the respondent.

It is claimed on behalf of the appellant that in actual fact the money with which he bought the property was utilized for the purpose of redeeming a previous mortgage, and it is claimed that he would, in any case, be entitled to keep this mortgage alive for his protection. The chief difficulty in the way of this contention is that these facts were never pleaded in the trial Court. In view, however, of the conclusion we have come to on the main ground of appeal it is not necessary to consider this point any further. We allow the appeal and alter the decree of the trial Judge by omitting Lot No. 51 in Block 10-1, from the properties included in the mortgage decree. The respondent will pay the costs of the appellant in both Courts.

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