

**RAM KALI v. JOHN PERCY BAYLY AND SANTA
AND THE REGISTRAR OF TITLES**

[Civil Jurisdiction (Hyne, C.J.) June 18th, 1954]

Land Transfer and Registration Ordinance—Ss. 14, 31 and 51—duties of Registrar of Titles.

The plaintiff was the lessee of the first defendant who on 18th July, 1951, filed an application for cancellation of the lease with the Registrar of Titles accompanied by a declaration that the property had been re-entered.

On 10th September, 1951, the plaintiff was informed of the above cancellation.

On 6th June, 1952, an agreement for the sale of the land to the second defendant was executed. This transfer was registered on 11th July, 1952.

It was expressly declared in the above agreement that the plaintiff was in possession of the land in question.

The plaintiff brought an action claiming (*inter alia*) that the entry was unlawful and the Registrar of Titles should have heard evidence from the plaintiff before he cancelled the lease.

Judgment in the civil action was as follows.

HELD.—(1) That as the second defendant had not been a party to fraud or misrepresentation his title was indefeasible.

(2) That the Registrar of Titles was bound to register a cancellation on being satisfied that the application was in order.

Cases referred to:—

Gibbs v. The Registrar of Titles (1940) 63 C.L.R. 503.

Laffer v. Gillen (1927) A.C. 886.

Ann Bernard for the plaintiff.

D. M. N. McFarlane for the first defendant.

H. M. Scott, for the second defendant.

Justin Lewis, Crown Counsel, for the third defendant.

HYNE, C. J. (having stated the facts)—A transfer was produced showing that Santa was a purchaser for value. The Registrar duly registered the transfer and endorsed the Certificate of Title accordingly.

There was nothing on the transfer to show that it was not a genuine dealing, nor was there anything before the Registrar to indicate fraud or misrepresentation.

Learned Counsel therefore contends, and I agree, that Mr. Santa obtained an unassailable title. It can only be challenged if it can be shown that he was a party to fraud or misrepresentation. There is no evidence at all that Mr. Santa was a party to fraud or misrepresentation, and he must be held to have an indefeasible title in accordance with section 14 of the Ordinance, which reads:—

"The instrument of title of a proprietor issued by the Registrar upon a genuine dealing shall be taken by all courts of law as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, and the title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to have been a party or on the ground of adverse possession in another for the prescriptive period. A duplicate or certified copy of any registered instrument signed by the Registrar and sealed with his seal of office shall be received in evidence in the same manner as an original."

At page 82, *Wiseman—Transfer of Land 2nd Edition*—says:—

"Subject only to such qualifications as the Act itself declares . . . indefeasibility of title . . . is universally acknowledged in Australia as the effect of a certificate of title unaltered and unchallenged."

At page 84 *Wiseman* says further:—

"The Real Property Act (S.A.) makes a certificate of title absolute and indefeasible evidence in any court of law or equity here; and in this case a person holding a certificate of title comes into court to maintain an action of ejectment. He produces his certificate and that is final and absolute evidence of his right to the land, unless the defendants are prepared to get rid of the certificate by showing that it was obtained by fraud. If they cannot get rid of it in this manner they are bound by it, for it is absolute and indefeasible evidence, and no court can refuse to receive it as such."

In view of the analogy between section 14 of our Ordinance and Australian legislation, I have no hesitation in applying the principles enunciated in the foregoing extracts to the case before me.

Mr. Santa has obtained an indefeasible title and the Court cannot go behind it.

It is now necessary to deal with the claim against the Registrar of Titles.

The plaintiff has alleged that the Registrar of Titles mistakenly exercised the powers conferred on him by the Ordinance and unlawfully cancelled the lease.

It is first of all submitted that he could not take away the lessee's title on the mere presentation of an application by the lessor, accompanied by a declaration. To do so would, it is submitted, deprive the lessee of the protection of section 14 of the Ordinance. It is said, too that the writing of "cancelled" across the lease could not remove the memorial. I cannot, in view of section 51, agree.

The Registrar of Titles has to be satisfied as to re-entry and recovery of possession. Mr. Woodward, the Deputy Registrar, in evidence explained the practice of the Titles Office and said he treated Mr. Bayly's application in the manner in which all such applications are treated. In *Laffer v. Gillen* (1927) A.C. p. 886, the Privy Council, dealing with an appeal from the High Court of Australia relating to an entry by the Registrar-General in the register, of the forfeiture of certain Crown lands for default in the performance of certain requirements under an agreement for the sale of certain land, said at p. 897:—

“ If the view of the appellant is not correct, then the Crown is in a less favourable position than an ordinary person. In the latter case, when once he has satisfied the Registrar and the necessary entry has been made in the register, the validity of the re-entry cannot be questioned, for the statute provides that the estate of the lessee in the land shall thereupon determine.”

The position as to the determination of an estate is similarly provided for under section 51 of the Ordinance.

It is said, too, on behalf of the plaintiff that the plaintiff had a right to be heard. There is no such requirement in section 51 or elsewhere in the Ordinance. The proviso only requires notice to be given to sub-lessees or sub-tenants when re-entry is based on non-payment of rent, to give them an opportunity of paying arrears if they wish.

It has been submitted that the lease could only be cancelled at the request of the lessee. There is no authority for this. Indeed, if this were so, a lessor would, it seems to me, never be able to secure the cancellation of a lease.

Clause 14 gave the lessor an express right of re-entry which he could and did exercise on the happening of a certain event.

Being satisfied that the declaration was right on the face of it, the Registrar was bound to register.

At page 65 (*Transfer of Land 2nd, Ed.*) *Wiseman* says, in the paragraph dealing with the duties of the Registrar—

“ It is not his duty to require proofs negating any fraud or improper dealings where there is nothing on the face of the document submitted to suggest it.”

The Registrar's right to refuse to register a document presented for registration seems to me to be limited to cases falling within section 31 of the Land (Transfer and Registration) Ordinance.

It is submitted, too, that the Registrar should have required production of the agreement (Exhibit “ G ”) between the first and second defendants before registering the transfer of the land to Santa.

In *Gibbs v. Registrar* (1940) 63 C.L.R., 503, referred to at p. 110 of *Baalman (Torrens System in New South Wales)*, a mortgage lodged for registration included a covenant requiring the mortgagor to build a house in accordance with certain plans and specifications. The Registrar refused to register on the ground that the plans and specifications were incorporated by reference only, and that the complete terms of the mortgage could therefore be ascertained only by inspecting documents which would not be in the Registry. Each of the Justices expressed the opinion that the refusal could not be justified on that ground.

This is, admittedly, an Australian case, but for reasons I have already intimated, it can, in my opinion, properly be followed here.

The Registrar of Titles could not therefore have demanded production of the agreement before registering the transfer to Mr. Santa.

On a review of the authorities and of the evidence given by Mr. Woodward, I cannot agree that the Registrar of Titles either mistakenly exercised his powers under the Ordinance or unlawfully cancelled the lease.

There is no doubt as to his right to cancel a lease if he is satisfied that the lessor has re-entered and recovered possession lawfully, and possession does not mean physical possession. He is under no duty to give notice to the lessee if re-entry is based on non-payment of rent. He has no right to refuse registration of any document, except in accordance with section 31, and he cannot refuse to register an instrument by reason of the non-production of any document referred to therein. It is no part of his duty to require proof of fraud if the document is right on the face of it.

Mr. Woodward gave detailed evidence of the practice of the Titles Office, evidence which I unreservedly accept. I am fully satisfied that that the practice outlined by him was meticulously followed.

To suggest that the Register of Titles mistakenly exercised his powers has therefore not been established.

Judgment entered for the three defendants with costs.