

FERNANDO v. DOCHCHI.

D. C. Negombo, 3,162.

*Intestate estate—Right of widow to convey—Worth of estate—Civil Procedure Code, s. 547—Onus probandi.*

1901.  
February 28  
and  
March 1.

BONSER, C.J.—If a person desires to prove title to property deduced—through a former owner who has died intestate, he must prove one of two things: either that administration had been taken out to the intestate and that the administrator has conveyed the intestate's estate to him or to his predecessor in title, or that the intestate's estate was of less value than Rs. 1,000, so that administration was unnecessary.

THIS was an action for declaration of title in plaintiff's favour and for ejectment, on the footing that the land claimed had been adjudged to be the property of one Telenis in suit No. 6,858 of the District Court of Negombo, and that plaintiff had purchased it from Telenis's widow. The second defendant pleaded that the decree in case No. 6,858 did not bind her; that Telenis's widow had no right to sell the land; and that it belonged to her and the first defendant, her husband, since deceased, by prescriptive possession. On the trial day it was contended for defendant that Telenis's widow had no right to sell the land without first obtaining letters of administration, as the estate was worth more than Rs. 1,000. Upon the District Judge ruling that section 547 of the Civil Procedure Code did not apply to the case, and that the action was maintainable, counsel for plaintiff suggested that the first issue

1901. for trial was whether the second defendant was the lawful wife  
 February 28 of the first defendant, deceased. The District Judge upheld  
 and this contention and called upon the second defendant to begin.  
 March 1. As she failed to adduce evidence, he entered judgment for  
 plaintiff.

The second defendant appealed.

*Wendt*, for appellant.

*Morgan*, for respondent.

1st March, 1901. BONSER, C.J.—

It seems to me that this trial has miscarried. All parties seem to have been more or less at cross purposes. The District Judge held wrongly that section 547 of the Civil Procedure Code did not apply to this case. This is a case in which the transferee of the widow of a man who died intestate seeks to recover certain land which he alleges formed part of the intestate's estate, and which therefore the widow had a right to convey to him. Now the question whether the widow had a right to convey to him will depend on whether the estate was worth less in value than a thousand rupees; and that is for the person who seeks to make out title to prove affirmatively. If the estate of the deceased was worth more than a thousand rupees, he can only have title by a conveyance from the administrator of the estate. I repeat what I said in a recent case, No. 11,584, D. C., Kandy, which came up in appeal on the 13th of this month: "It seems to me that if a person desires to prove title to property and finds it necessary to deduce a title to that property either from or through a former owner who has died intestate, he must prove one of two things: either that administration has been taken out to the intestate and that the administrator has conveyed the intestate's estate to him or to his predecessor in title, or that the intestate's estate was of less value than Rs. 1,000, so that the administration was unnecessary."

The order we will make in this case is that the case be sent back for a new trial on the following issues: (1) as to the value of the estate of the intestate Telenis Fernando: if the plaintiff proves that the estate was less in value than a thousand rupees, so that it was unnecessary to take out administration and therefore the heir could convey, there will be a further issue; (2) whether under the circumstances the widow of Telenis Fernando was entitled to sell for the purpose of raising money for the prosecution of the supposed murderers of her deceased husband; (3) whether this defendant was estopped by the judgment in case No. 6,858 of the District Court of Negombo;

(4) whether the two defendants were husband and wife; and (5) whether the defendants can make good their statutory plea under section 3 of Ordinance No. 22 of 1871 of possession for more than ten years.

BROWNE, A.J., agreed.

1901.  
*February 28*  
*and*  
*March 1.*  
BONSER,  
C.J.

