

1940

Present : Howard C. J. and Keuneman J.

ALAGAPPA CHETTIAR *et al.* v. PALANIAPPA CHETTIAR.

173—D. C. (Inty.) Colombo, 2,325.

*Reciprocal Enforcement of Judgments Ordinance (Cap. 79)—Failure to comply with rule 3—Defect in the affidavit—Fatal to application—Civil Procedure Code, s. 384.*

Where a person who applied for the registration of a judgment in his favour under the Reciprocal Enforcement of Judgments Ordinance failed to comply with the requirement of section 3 of the rules framed under the Ordinance regarding essential statements in the affidavit on which the application was based,—

*Held*, that section 3 of the rules framed under the Ordinance was peremptory and that the defect in the affidavit could not be made good by an inquiry under section 384 of the Civil Procedure Code.

**A** PPEAL from an order of the District Judge of Colombo.

*N. Nadarajah* (with him *S. J. V. Chelvanayagam* and *E. B. Wikremanayake*), for the petitioners, appellants.

*H. V. Perera, K.C.* (with him *C. Thiagalingam*), for the respondent.

March 6, 1940. HOWARD C.J.—

This is an appeal from an order made by the District Judge of Colombo setting aside an order made by another District Judge allowing an application for the registration of a judgment in favour of the applicant given by the Supreme Court, Ipoh, in the Federated Malay States. The ground on which the District Judge set aside this order for registration was that the affidavit of the judgment-creditor supporting the application for registration was defective inasmuch as it did not comply with the provisions of section 3 of the rules made under the Reciprocal Enforcement of Judgments Ordinance, No. 41 of 1921. The judgment-creditor instead of seeking the ordinary remedy in these Courts by suing his debtor has chosen the short cut of proceeding under the Reciprocal Enforcement of Judgments Ordinance. Having adopted this short cut, it was essential that he should comply with the special procedure which is formulated in the Ordinance and under the rules. He has not complied with that procedure inasmuch as the affidavit on which the application for registration was based did not state that to the best of his information and belief he was entitled to enforce the judgment and also that the judgment does not fall within any of the cases in which under section 3 (2) of the Ordinance a judgment cannot properly be ordered to be registered.

We have been asked by Counsel for the judgment-creditor to say that Rule 8 (c), which applies to a case where an application to set aside the registration has been made applies, and that under this section the Court should have conducted an inquiry and followed the procedure prescribed in Chapter 24 of the Civil Procedure Code. In this connection he refers us to the provisions of section 384 of the Civil Procedure Code which

provides for such an inquiry. We are of opinion that section 3 of the rules made under the Reciprocal Enforcement of Judgments Ordinance is peremptory and even if an inquiry was held under section 384 of the Civil Procedure Code that inquiry could not supply or make good the original defect in the affidavit which required certain statements to be made by the deponent. In these circumstances we think the order setting aside the registration is correct. The appeal is therefore dismissed with costs.

*Appeal dismissed.*

KEUNEMAN J.—I agree.

