

Present: Garvin and Lyall Grant JJ.

MARIKAR v. PERERA

38—D. C. (Inty.) Kalutara, 12,645.

Action under section 247 of the Civil Procedure Code—Claim inquiry—  
Extra judicial investigation—Civil Procedure Code, ss. 245  
and 247.

Where, upon a claim being preferred under section 241 of the Civil Procedure Code, the Judge dismissed the claim, after obtaining certain information from the Secretary of the Court,—

Held, that the order disallowing the claim was not conclusive as to the title of the claimant if no action under section 247 was brought.

**A** PPEAL from an order of the District Judge of Kalutara. The facts appear from the judgment of Garvin J.

*E. W. Jayewardene, K.C.* (with *J. S. Jayewardene*), for 3rd defendant, appellants.

*H. V. Perera* (with *Rajapakse*), for plaintiff, respondent.

June 29, 1927. GARVIN J.—

This appeal arises from a contest between the plaintiff and the 3rd defendant, each of whom claims to be lawfully entitled to the land which is the subject-matter of this action.

The parties are agreed that this land once belonged to Deonis.

The plaintiff claims by a right of purchase at a sale in execution of a writ issued against Deonis in case No. 10,152 of the District Court of Kalutara, and he relies on his Fiscal's transfer No. 9,499 dated July 22, 1924.

It is the case for the 3rd defendant that Deonis had sold and conveyed his interests in this land by deed dated March 8, 1923, to one Jinadasa, whose interests passed in 1924 to Noris Singho, who in turn sold to the 3rd defendant.

The plaintiff, however, contended successfully in the Court below that the title of the 3rd defendant was barred by reason of the circumstance that Jinadasa claimed the land when it was seized under the writ issued in D. C., Kalutara, No. 10,152. That claim was disallowed, and no action under section 247 was instituted by Jinadasa to establish his claim to the land.

The learned District Judge upheld this contention, and the question which arises for decision upon this appeal is whether the order disallowing the claim of Jinadasa is an order under section 244

1927. of the Civil Procedure Code, and as such conclusive as to the title of  
 GARVIN J. Jinadasa and his successor the 3rd defendant by reason of the  
 Marikar v. admitted fact that Jinadasa brought no action under section 247 to  
 Perera establish his claim.

A certified copy of what purports to be the claim proceedings taken in case No. 10,152 is filed of record. It consists of the formal report made by the Fiscal of the seizure and of the fact that the premises under seizure were claimed by Jinadasa. Upon this the learned District Judge had endorsed—

“ Let me see deed of purchase please. ”

The next following entry indicates that it was addressed to the Secretary of the Court. The entry is as follows:—

“ Sir, by deed of transfer No. 14,637 dated March 8, 1923, Kapuge Don Deonis Appu transfers the entirety of Wekiriela godella to Busige Jinadasa Perera for Rs. 500. This deed and the connected deeds are submitted . . . . (Sgd.) R. M.”

It is quite obvious that the Secretary obtained the deeds from the claimant and submitted them to the Judge presumably in Chambers.

The next endorsement is as follows:—

“ When was the action No. 10,152 filed. What is the date of the decree, and has consideration passed on this deed.”

The paper contains a further entry by the Secretary answering these questions. It is followed by the following endorsement:—

“ Claim disallowed. Sale is after date of decree. Judgment debtor (the vendor) is reported in possession at date of seizure. ”

It is signed by the District Judge.

This is the order which it is said is conclusive as to the title which the 3rd defendant wishes to establish. By section 247 the orders which are made conclusive are orders made under sections 244, 245, and 246.

It has been held repeatedly by a long series of judgments of this Court, based upon an examination of sections 244, 245, and 246 and the kindred sections of the Code, that the order which is made conclusive by section 247 is an order passed by the Court, after investigation of the claim. See *Fonseka v. Ukkurala*,<sup>1</sup> *Chelliah v. Sinnacutty*,<sup>2</sup> *Maricair v. Maricair*<sup>3</sup> *Perera v. Fernando*,<sup>4</sup> and *Kiri Etana et al v. Kirihamy Vidane et al*.<sup>5</sup>

<sup>1</sup> (1912) 15 N. L. R. 219.

<sup>2</sup> (1914) 18 N. L. R. 65.

<sup>3</sup> (1915) 1 C. W. R. 17.

<sup>4</sup> (1917) 4 C. W. R. 164.

<sup>5</sup> (1921) 22 N. L. R. 438.

Section 241 of the Code requires the Fiscal to report a claim to the Court. It then proceeds as follows :—

“ And the Court shall thereupon proceed in a summary manner to investigate such claim or objection, with the like power as regards the examination of the claimant or objector, and in all other respects as if he were a party to the action.”

1927.

GARVIN J.  
—  
*Marikar v.  
Perera*

What is contemplated is a proceeding in Court of a summary nature directed to the investigation of the claim preferred. This is in no sense such a proceeding, nor is it possible to suggest that this is such an investigation as is required before an order disallowing a claim can fairly be said to be an order made under section 245, and as such conclusive as to the title of the claimant if no action under section 247 is brought. Such inquiry as has been made appears to be extra judicial, and consists of some queries addressed to the Secretary and answered by him. No date for an inquiry was fixed, and no inquiry has, in fact, been made by the Court of the claimant, nor was he given any opportunity of establishing that he had some interest in or was possessed of the property seized. An order made under these circumstances is not conclusive as to the title of the claimant, and does not operate as a bar to the proof of his title in any subsequent proceeding.

For these reasons I would set aside the order under appeal, and remit the case to the Court below for the trial and determination of the remaining issues.

The appellant is entitled to the costs of this appeal and of the contest in the Court below.

LYALL GRANT J.—

The principal question for decision in this case is whether an effective order under section 245 of the Civil Procedure Code was made so as to bar the present action.

A claim was preferred by the appellant under section 241. The journal entries show that the learned District Judge called for the deed of purchase upon which the claim was founded and obtained information from the clerk of the Court. Thereupon the District Judge disallowed the claim. There is nothing to show that any other investigation of the claim was made.

The only question for decision in this appeal is whether this is a sufficient investigation under section 241. Section 241 directs the Court to investigate the claim, with the like power as regards the examination of the claimant, and in all other respects as if he were a party to the action.

There is nothing to show that the claimant was given an opportunity to be heard in support of his claim, and it may be assumed that he was not heard.

1927.  
LYALL  
GRANT J.  
Marikar v.  
Perera

In *Fonseka v. Ukkurala*<sup>1</sup> the Court held that where a claimant was prevented from attending the inquiry and presenting his claim owing to a mistake on the part of the Court, and the Court dismissed the claim owing to the absence of the claimant, the order was not a valid order under section 245 and was not conclusive within the meaning of section 247.

In *Chelliah v. Sinnacutty*<sup>2</sup> it was held that where the claim was dismissed owing to a default by the claimant in supplying the necessary stamps to issue notice on the parties, it did not amount to an order disallowing the claim under section 245.

It is clear that the practice of this Court has been to insist *inter alia*, upon an inquiry, in open Court, and that such an inquiry alone has been considered to be the investigation mentioned in section 241.

An order made without such an investigation, or at any rate without an opportunity being given to the claimant to prove his claim and to the creditor to raise objections, is not an order under section 245. and does not prevent the claimant maintaining an action after the fourteen days mentioned in section 247 have elapsed.

*Set aside.*

---

<sup>1</sup> (1912) 15 N. L. R. 219.

<sup>2</sup> (1914) 18 N. L. R. 65.