

Present: Ennis J. and Schneider A.J.

1916.

HAMIDU v. KIRIHAMY et al

67—D. C. (Inty.) Kurunegala, 4,971.

Sale in execution—Subsequent reversal of decree.

A sale having duly taken place in execution of a decree valid at the time cannot afterwards be set aside as against a *bona fide* purchaser not a party to the decree, on the ground that the decree had been, subsequently to the sale, reversed.

UNDER a decree of the Court of Requests of Colombo the land in claim, which is situate within the jurisdiction of the District Court of Kurunegala, was seized upon writ and sold by the Fiscal and purchased by Kiri Banda, a person other than the execution-creditor. The sale was confirmed and a Fiscal's transfer issued to the purchaser, who thereafter sold it to the plaintiff.

Two years after these transactions the decree of the Court of Requests, Colombo, was reversed for want of territorial jurisdiction. The defendants-appellants pleaded that the Fiscal's sale passed no title to the purchaser, inasmuch as the decree on which the sale was held was set aside.

The parties went to trial on the following issues:—

- (1) Are the rights acquired by the plaintiff through the sale in execution of the decree in C. R. Colombo, case No. 23,526, affected by the circumstance of the said decree having been subsequently set aside, in view of the fact that the sale in execution was confirmed before the decree was set aside?
- (2) Are those rights unaffected by the setting aside of the decree by reason of the fact that the purchaser was not made a party to the proceedings for setting aside the decree?
- (3) Had the Court of Requests of Colombo in case No. 23,526 jurisdiction to confirm the sale in execution?
- (4) Has this Court jurisdiction to try the issue whether the Fiscal's sale pleaded by the plaintiff (if there was such a sale) is liable to be set aside on the ground of fraud, in that the present plaintiff was acting in collusion with the execution-creditor and purchaser, and obtaining a decree and Fiscal's transfer without sale?

The District Judge (G. W. Woodhouse, Esq.) answered the first three issues in favour of the plaintiff, and the last in favour of the defendant, and in the result entered judgment in favour of the plaintiff.

The defendants appealed.

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E. W. Jayewardene, for the appellants.—The Fiscal's sale in question was a nullity, inasmuch as the proceedings in the Court of Requests of Colombo, which passed the decree (which led to the sale), were void *ab initio*. The Court of Requests has itself held that it had no jurisdiction to try the case in which writ issued. Moreover, no summons had been served on the defendants in that case. If a decree is reversed because a Court has no jurisdiction there is no judgment, and everything done on the basis of existence of the judgment falls, and the sale is void. Counsel cited 32 *Cal.* 296; 38 *Cal.* 622, *Hukm Chand* 397; *Bose's Digest*, vol. V., p. 11414; *Rampini* (6th ed.) 521; 15 *All.* 324; 12 *Sutherland W. R.* 72.

Canakeratne (with him *Bawa*, *K. C.*, *Allan Driberg*, and *A. St. V. Jayewardene*), for respondent.—The respondent is a *bona fide* purchaser from Kiri Banda, who purchased at the Fiscal's sale. If Fiscal's sales are to be invalidated on grounds like these, no one will care to buy at Fiscal's sales. The Privy Council has held that a sale in execution is not invalid merely because the judgment which led to the writ and sale was set aside in appeal. See 10 *All.* 166.

E. W. Jayewardene, in reply.

Cur. adv. vult.

July 5, 1916. ENNIS J.—

In this case the plaintiff claimed title to an undivided share of a land called Ihalakumburaismattewatta. The plaintiff purchased from one Kiri Banda, who purchased at a Fiscal's sale held in execution against Bandara Menika, Ran Menika, and Sambalingam. The learned District Judge on certain preliminary issues held in favour of the plaintiff, and fixed a date for trial of the remaining issues. It is contended for the appellants that the decree under which the land was sold by the Fiscal having been set aside on the ground that the Court had no jurisdiction the sale was null and void. It is admitted that the failure of jurisdiction was "territorial."

It seems to me to be unnecessary to go at length into the cases cited to us, as one *Zain-ul-abdin-khan v. Muhammad Asghar Ali Khan and others*,¹ decided by the Privy Council is directly in point. It was there held that a sale, having duly taken place in execution of a decree valid at the time, cannot afterwards be set aside as against a *bona fide* purchaser, not a party to the decree, on the ground that the decree had been, subsequently to the sale, reversed. In that case the decree, as far as it was set aside, was set aside on the ground that the original Court had no jurisdiction, as the cause of action did not arise within the territorial limits of the Court.

In my opinion the decision of the learned District Judge is right for the reasons which he has given. I would dismiss the appeal with costs.

SCHNEIDER A. J.—I agree.

Appeal dismissed.

¹ *I. L. R.* 10 *All.* 166