

1889.

January 29
and
February 6

ANDRIS SILVA v. RANMENIKA.

D. C., Galle, 53,611.

(*"Dowan Arachchi's Case."*)

*Action for recovery of land—Parol agreement to establish interest in land—
Possession of plaintiff—Title deeds in favour of defendant's vendor.*

Where A brought an action for the recovery of land alleged to have been purchased by B for the plaintiff, and to have been possessed by the plaintiff from the date of such purchase till the ouster by the defendant, who claimed under B,—

Held that, in the absence of an allegation of fraud or mistake on the part of B, it was not possible to set up a parol agreement between him and the plaintiff for the purpose of establishing an interest in land.

IN this case plaintiff claimed a portion of certain land as having been purchased for him by one Daniel Wijeyaratne, commonly called Dowan Arachchi, at a Fiscal's sale on the 20th December, 1873. He alleged that he had been in possession of the premises ever since that sale until February, 1887, when the property was sold under a writ against the first defendant, widow of Dowan Arachchi, and purchased by second defendant, who went into possession under his purchase.

The defendants denied that Dowan Arachchi purchased on behalf of the plaintiff, and pleaded that he purchased it for himself, and that he and his widow (first defendant) after him were in exclusive possession up to the sale in February, 1887, when second defendant purchased under a writ against first defendant.

1889.
January 29
and
February 6.

The District Judge, Mr. J. W. Patterson, dismissed the plaintiff's action, holding that the evidence led by the plaintiff to show that he had found the money for the purchase of the property and entrusted to Dowan Arachchi was not trustworthy, and that plaintiff's alleged possession of the property was accounted for by the admission of his own witnesses that at the time of such possession plaintiff was managing the estate of Dowan Arachchi for his widow, the first defendant, but later on the first defendant herself occupied it for about nine years until the sale in execution against her. He further found that, even if it be assumed that plaintiff found the money for Dowan Arachchi, plaintiff was insolvent at the time, and that his object in purchasing in the name of Dowan Arachchi was to defraud his creditors, and that "though at the instance of plaintiff's creditors it might be declared that the purchase by Dowan Arachchi in 1873 was as trustee for plaintiff, the Court will not lend itself to the fraudulent acts of the plaintiff by making such a declaration at plaintiff's instance." He further held, that "even if plaintiff's conduct was not in fraud of creditors, his laches in allowing the title deeds to be in Dowan Arachchi's hands, and to remain in Dowan Arachchi's hands, and the property to be in the ostensible possession of first defendant, thereby enabling her to mortgage the property to an innocent mortgagee, would disentitle him to relief."

Plaintiff appealed.

The case came on for argument on the 29th January, 1889, before BURNSIDE, C.J., and CLARENCE and DIAS, J.J.

Cur. adv. vult.

6th February, 1889. BURNSIDE, C.J.—

We may dispose of this appeal very briefly. On the first point, as a matter of law, it is not open to the plaintiff to claim title to the land in question under the Fiscal's conveyance to Dowan Arachchi. There is no allegation whatever in the plaintiff's libel, nor does it appear in proof, that Dowan Arachchi obtained the conveyance in his own name, either by fraud or mistake; and by our law, differing in this respect from the English Statute, it is not possible to set up a mere parol agreement to establish an interest on title to land, so that even supposing the plaintiff's allegation of facts to be true, he cannot have the remedy he seeks. The District Judge, whilst

1880.
January 29
and
February 6.
BURNSIDE,
C.J.

inclining to the belief that Dowan Arachchi purchased the land for the plaintiff under some contract with him, disbelieves the plaintiff's story of his having supplied the funds to pay for it. If he did not, and I am not disposed to disagree with the District Judge on the point, then he could have no *locus standi* whatever as against the heirs of Dowan Arachchi.

The next point is the adverse possession which the plaintiff has set up; I have gone through the evidence very carefully, and it establishes that, except for a very short period in 1877, the possession was undoubtedly in Dowan Arachchi and his widow, and those claiming under them. The plaintiff has therefore acquired no title by adverse possession. The position in which the plaintiff stood to the widow of Dowan Arachchi may explain her alleged act of excluding the land from the administration if it were her act at all, and not that of the plaintiff himself, but it cannot affect the legal title to the land, which, being in Dowan Arachchi, became part of his estate on his death.

The District Judge's ruling that the transaction was intended to defraud the plaintiff's creditors does not affect the decision of this case.

The judgment, on the grounds I have stated, should be affirmed with costs.

CLARENCE, J., and DIAS, J., concurred.
