

## HENDRICK APPU v. SIRIWARDANE.

D. C., Galle, 6,211.

1902.

February 14.

*Sale of immovable property by administrator—Want of special authority from Court to sell—Improper conditions of sale—Liability of administrator to convey property sold—Action by purchaser for conveyance—Jurisdiction of Court to entertain suit—Duty of purchaser.*

An order of court to sell the immovable property of a deceased person in order to pay his debts is not a proper order to make, in accordance with the letters of administration.

What the law requires is that there should be before the judge materials to show that a sale is necessary, and that the judge upon those materials should give leave to sell a certain specified portion of the immovable property as may be in his opinion sufficient for the purpose.

In the case of a sale authorized by Court, it is an improper contract in the conditions of the sale to make the purchase money payable to the auctioneer.

Nor is it legal, when the purchase money has not reached the hands of the administratrix, to order her to convey the land to the purchaser.

Where an administratrix, appointed by the District Court of Colombo, obtained the general leave of that Court to sell so much of the immovable property of the estate as would be necessary to pay off its debts, and entrusted the sale of a property situate in the District of Galle to an auctioneer who did not pay to her all the proceeds realized, and where the purchaser raised an action in the District Court of Galle against the administratrix and the auctioneer, praying for a conveyance of the property to her,—

*Held*, that all questions arising out of the execution of the order of sale by the District Court of Colombo should be referred to and decided by that Court, and not by the District Court of Galle.

The proper course was for the purchaser to present a petition by way of summary procedure in the administration suit pending before the District Court of Colombo, and pray for adjudication on the facts stated.

*Held* also, that before a person purchases immovable property from an administrator, he should see that the vendor had special authority from the Court, and that all formalities connected with the sale are properly carried out.

**I**N this action plaintiff alleged that the first defendant, as administratrix of the estate of one Amerasinhe Mudaliyar, authorized the second defendant to sell by auction the land called Meddadowawatta belonging to the deceased; that at the auction held the land was knocked down to the plaintiff for Rs. 450; that in terms of the conditions of sale signed by the plaintiff and the first and second defendants, the plaintiff paid to them Rs. 450 and presented a deed of conveyance for their signature, but defendants refused to sign the same. He prayed that the defendants be compelled to sign and deliver the said deed in his favour.

The defendants filed separate answers. It appeared that the first defendant refused to sign the deed because the second

1902, defendant did not pay to her a portion of the price received February 14. by him from the plaintiff.

It appeared that the administratrix was appointed as such by the District Court of Colombo, and had leave from it to sell so much of the immovable property of the estate as was necessary to pay off its debts; and that the land sold for this purpose was situate in the District of Galle.

The District Judge (Mr. J. D. Mason) held that, as the second defendant had admitted receipt of the price of the land sold, it was the duty of the first defendant to execute the deed of transfer. He decreed that she should sign and perfect it, and pay to plaintiff and second defendant their costs.

The first defendant appealed.

*Van Langenberg*, for appellant, opened the facts of the case. [BONSER, C.J.—In a similar case specific performance was refused by this Court.] Yes, in *Pathumma v. Krause* (5 N. L. R. 162). [BONSER, C.J.—How can the administratrix be compelled to transfer land which does not belong to her?]

*E. Jayawardene*, for respondent.—She had the leave of court to sell the immovable property of the estate, and having entered into a contract with the plaintiff at the auction, and received payment of the price through her agent, she must fulfil her part of the agreement. [BONSER, C.J.—But special leave was not given to sell this property.] Nobody has been, nor will be, injured by the want of special leave. The first defendant in the present case has, as plaintiff in suit No. 6,016, D.C., Galle, obtained judgment against the present second defendant (the auctioneer for the money received for the use of the first defendant. It has not been the practice in our Courts to give special leave. [BONSER, C.J.—The letters of administration prohibit the administrator from selling any immovable property without the special leave of the Court.] The authority given by the Court in the present case must be treated as special leave. [BONSER, C.J.—No. Special leave means special permission to sell a specific land (*Pathumma v. Krause*, 5 N. L. R. 162). How can the Court compel the administratrix to convey title to a land which is not hers, and to do which special leave is required?] There was no such issue raised in the Court below. [BONSER, C.J.—The issues are between the parties to the case, but she, being an administratrix, is an officer of the Court, which must maintain its authority over her, and safeguard the interests of the heirs. If she has injured you, you have your remedy against her personally.]

BONSER, C.J.—

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This is another case which illustrates the carelessness with which administration matters are conducted. As I pointed out in a recent case (*Pathumma v. Krause*. 5 N. L. R. 162) the power of an administrator to sell real estate of the intestate is a strictly limited one. Under the letters, which are the administrator's title, he is prohibited from selling any part of the immovable property of the intestate, "except with the special leave of the Court." There "special" means special, but apparently many persons who ought to know better seem to think special does not mean special but general.

In 1900 the appellant's husband died intestate and letters of administration were granted to her. The intestate had five children, two of whom were minors. On the 28th June the administratrix's proctor applied to the District Court of Colombo, in which the administration was pending, for leave to sell the immovable property of the deceased as far as might be necessary to pay the debts of the deceased. Upon that the judge made this order: "Application allowed. Sale by public auction, and minors' shares to be brought into Court within thirty days of the sale." It seems to me that that was not a proper order to make in accordance with the letters of administration. That was a general authority and not a special authority, and it was indefinite: it was to sell so much as might be necessary. What the law contemplates is that there should be before the judge materials to show that a sale is necessary, and that the judge, upon those materials should give leave to sell a certain specified portion of the immovable property as may be in his opinion sufficient for the purpose.

Thereupon the administratrix went to some native auctioneer in Galle, where the immovable property was situated, and instructed him to sell a certain estate called Meddadowawatta, about 2 acres in extent. The auctioneer filled up certain conditions of sale, which are apparently in a common form printed in Sinhalese, of which a translation has been put in and filed in the record. If these conditions of sale are anything like the translation, they are most extraordinary conditions. The first condition is that a reward is to be given to the second highest bidder, so as to induce people to bid. Another is that if anyone bids he cannot stop without further bidding: he must go on. The fourth condition is that immediately on the fall of the hammer the purchaser is to pay a quarter of the purchase money to the auctioneer and also to pay the balance on completing the purchase. The fifth condition gives

1902. him time to pay the balance, which had been stipulated for on  
*February 14.* the fall of the hammer, till a later date. It is to be hoped  
 BONSER, C.J. that much of what appears to be incomprehensible is due to  
 the fault of the translator, but one thing is plain, that the  
 contract provides for the purchase money to be paid to the  
 auctioneer, and it seems to me that that is an improper condition  
 in the case of a sale with the authority of Court by a person  
 who is a mere trustee for others, specially for the estate of minors.  
 Plaintiff in the present action appears to have been the highest  
 bidder at the sale under these conditions, and he appears to have  
 paid, according to these conditions, the whole of the purchase  
 money to the auctioneer, and he signed the conditions of sale, the  
 signature being attested by a notary. Disputes arose between the  
 auctioneer and the administratrix, who could not get the money  
 from the auctioneer, and she consequently declined to execute the  
 conveyance. Thereupon the purchaser brought this action in the  
 District Court of Galle, against the administratrix in her official  
 capacity and against the auctioneer, asking for a declaration that  
 the administratrix was bound to execute a conveyance to him. The  
 District Judge held that the defendant could not refuse to execute  
 a transfer of the land, which was sold by her agent the auctioneer,  
 the auctioneer having admittedly received the purchase money,  
 and he decreed that the first defendant do sign a transfer and  
 ordered the first defendant to pay the costs of the plaintiff and also  
 of the second defendant, the auctioneer, in the case. The adminis-  
 tratrix has appealed.

We think that the appeal ought to succeed. The Court ought not,  
 in the circumstances, make an order on the administratrix to convey  
 land belonging to the estate when the purchase money has never  
 reached, and may never reach, the proper hands, and I do not  
 see how it was that the District Court of Galle had any jurisdiction  
 to interfere in this matter. The sale was a sale ordered by the  
 District Court of Colombo in an action pending before it. It seems  
 to me that all questions arising out of the execution of that  
 order should be referred to and decided by that Court. If the  
 plaintiff was of opinion that the administratrix, as the officer  
 appointed by the District Court of Colombo, was not properly per-  
 forming the duties of that office and carrying out the orders of  
 that Court his course was to represent matters to the District  
 Court of Colombo and obtain an order of that Court upon the matters  
 complained of. The course was, it seems to me, to have presented  
 a petition on summary procedure in the action, and to have stated  
 the facts and asked for the order of the Court. But I do not think  
 he had any right to go to another Court and to ask that Court to  
 adjudicate on a matter which was within the cognizance of the

District Court of Colombo. It was said that the plaintiff ought not to suffer by reason of the District Court having improperly made an order for sale without taking proper precautions to see that the sale was properly carried out. But the answer to that is that it was the purchaser's duty to see that everything was in order. He had notice that his vendor was not the owner of the property, and that she could only sell in a certain way upon special authority, and he ought to have seen further that his vendor had that authority. If he chose to enter into a contract without seeing that his vendor had the requisite authority, he cannot complain if the Court refuses to enforce that contract when it has discovered that there is no authority. If the purchaser has any cause to complain against the administratrix personally, the dismissal of this action will not interfere with his asserting his rights.

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BONSER, C.J.

WENDT, J.—

I agree. So much injury and damage to the heirs comes to be engendered in our Courts by the practice of giving administrators general leave to sell property, that I think we ought to be careful strictly to construe the conditions in the form of the letters of administration issued from the Court, and I think District Courts would do well to insist on the conditions of sale being submitted to them for approval by the administrator before the sale itself is carried out. In no case certainly ought these conditions to provide for payment of money to the auctioneer.

