

Present : Ennis and Porter JJ.

1922.

NONNOHAMY *et al.* v. PODISINGHO *et al.*

466—D. C. Colombo, 155.

*Action by administrator—Action dismissed with costs—Seizure of property belonging to intestate in execution of decree for costs—Must the personal property of the administrator be discussed before levying execution against the property of the deceased—Civil Procedure Code, s. 474.*

Section 474 of the Civil Procedure Code merely provides an additional remedy against the executor or administrator personally. Where, therefore, an administrator brings an action as administrator and is ordered to pay costs, the defendant may seize the property of the intestate in execution of his decree for costs.

THE facts are set out in the judgment of the Acting District Judge (K. Balasingham, Esq.) :—

This is an action under section 247 of the Civil Procedure Code. The first defendant brought an action as administrator of one Sanchiappu's estate against second, third, and fourth defendants. The action was dismissed, and he was ordered to pay the costs of the defendants in that case. The words of the decree are "that the said plaintiff do pay to the defendants the costs of the action." The plaintiffs are heirs of Sanchiappu. The second, third, and fourth defendants seized the entirety of the shares of three lands belonging to the estate of Sanchiappu in execution of the decree for costs.

The plaintiffs claimed a portion of the lands seized as theirs. Their contention is that the decree being one for costs it has to be paid by the administrator personally, and that the property of the estate of the deceased should not be seized in execution. I cannot agree.

No doubt the administrator is personally liable. But there is nothing in section 474, Civil Procedure Code, to support the proposition that the creditor cannot seize the estate of the deceased under a decree for costs. The plaintiff relies in *3 C. W. R. 328*. The facts of that case are totally different.

I dismiss plaintiff's action, with costs.

1922.  
 Nonnchamy  
 v. Podisingho

*J. S. Jayawardene*, for the appellant.—An administrator is personally liable for the costs of an unsuccessful action. Execution cannot be levied against the heirs, as they were not parties to the action. At any event, the property of the administrator, who is personally liable, should be seized in execution in the first instance. Council cited *3 C. W. R. 329*, *14 N. L. R. 327*, and *21 N. L. R. 510*.

April 4, 1922. ENNIS J.—

This was an action under section 247 of the Code by unsuccessful claimants to have it declared that their shares in certain land which had been seized in execution were not liable to seizure. The learned Judge found in favour of the defendants, and the plaintiffs appealed. It appears that the first defendant is the administrator of the estate of one Sanchiappu, and the second, third, and fourth defendants are judgment-creditors, and the plaintiffs are the heirs of Sanchiappu. The administrator himself is an heir of Sanchiappu. In an action by the administrator, as administrator, the plaintiff was ordered to pay the costs. The second, third, and fourth defendants then attached certain property belonging to the estate of Sanchiappu. The heirs now contend that by virtue of section 474 of the Civil Procedure Code execution for costs should run against the property of the administrator personally, and that the estate of Sanchiappu is not liable. Certain cases have been cited to us, namely, *Edirishamy v. De Silva*<sup>1</sup> and *Nugara v. Palaniappa Chetty*,<sup>2</sup> to show that an administrator is personally liable for the costs by virtue of the provision contained in section 474. In the present case, however, this is not the question which arises for decision. The question here is whether the heirs can say that the estate is not liable until the administrator personally has lost all his property or his person has been seized. In other words, all remedies given by the Code to obtain satisfaction of the judgment must be exhausted against the personal property of the executor before the property of the estate is liable. In my opinion the learned Judge is right in holding that section 474 does not prevent the seizure of the property belonging to the estate. Section 474, in my opinion, provides merely an additional remedy against the executor personally, and does not do away with the ordinary rule that the unsuccessful party is to pay the costs of an unsuccessful action. I am of opinion that the section was meant for the further protection of an unsuccessful defendant. In the circumstances I would dismiss the appeal.

PORTER J.—I agree.

*Appeal dismissed.*

<sup>1</sup> (1897) 2 N. L. R. 242.

<sup>2</sup> (1912) 14 N. L. R. 327.