

Present: De Sampayo J.

1919.

POOCHY v. WALLOOPILLAI.

154—C. R. Ratnapura, 15,414.

Seizure in execution—Claim upheld—Alienation by claimant—Subsequent seizure under same writ—Fiscal's sale—Res judicata.

Under a writ the entirety of a land was seized. V claimed a half share, and the claim was upheld in 1915. In 1916 V sold the half share to plaintiff. The other half share was sold under the writ and purchased by a third party. In 1917 the execution-creditor again seized V's half share under the same writ, and the defendant purchased it at the Fiscal's sale.

Held, that the defendant was not bound by the order in V's favour at the claim inquiry of 1915.

"Purchaser at an execution sale is not privy to the execution-creditor or to the execution-debtor. Even if the defendant is considered in the same position as the execution-debtors, it is quite clear that the execution-debtors were not bound by the order on the claim, although, according to the practice of our Courts, execution-debtors are noticed as regards the inquiry into any claim."

THE facts appear from the judgment.

Samarawickreme (with him *R. L. Pereira*) for defendant, appellant.—The defendant is not bound by the order in the claim inquiry of 1915. "There is no privity between a purchaser at a sale in execution of a decree and the judgment-debtor whose property is sold." *Hakm Chand on Res judicata* (1894 edition) 204.

E. G. P. Jayatileke, for plaintiff, respondent.—The Fiscal's sale as regards Valliamma's half share is a nullity. The Court had already made an order declaring that the judgment-debtor had no saleable interest therein. The Fiscal, when he seized the land in 1917, must have been aware of the previous claim by Valliamma

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and the order in her favour. Under these circumstances the Fiscal's sale would be void and no title would pass to the purchaser. *Gordion Appuhamy v. Maria Culas*.¹

December 1, 1919. DE SAMPAYO J.—

This appeal involves a point of law on the following state of facts. In the action No. 13,058 of the Court of Requests of Ratnapura, one Samuel, Head Kangany, obtained a judgment for money against two persons named Karuppen and Weeramma. Under execution issued in that case the entirety of a land called Polwattagerahena was seized by the Fiscal in December, 1913, whereupon one Valliamma claimed an undivided half share of the land, and an order was made in her favour on December 15, 1915. By deed dated January 16, 1916, Valliamma sold a half share to the present plaintiff. The other half share was sold under the writ and purchased by a third party. Then the execution-creditor issued writ again and seized a half share of the land on November 30, 1917, when the defendant became purchaser. In the circumstances it has been assumed, and I think rightly, that the half share which was sold and purchased by the defendant was the half share which Valliamma had claimed and had been allowed to her by the order of December, 1915. This case, although at its origin it purported to be an action under section 247 of the Civil Procedure Code, was ultimately considered an ordinary action for title. The question then was whether the plaintiff had title to the half share as against the defendant. This undoubtedly would have depended on proof of facts on which either side relied, but the case has been determined on a point of law. The Commissioner of Requests considered that the defendant was bound by the order of December, 1915, on the claim of Valliamma. I do not think the learned Commissioner was right on this point. The order on the claim was no doubt conclusive as between the execution-creditors and the claimant Valliamma, and consequently if, when the same share was seized again. Valliamma or a person claiming under her put in a claim, the execution-creditors would have been met by the plea of *res judicata*, and the share would have been ordered to be released from seizure. But the defendant, who is only a purchaser at an execution sale, is not in the position of the execution-creditor, nor, so far as the present question is concerned, in the position of the execution-debtors. Mr. Samarawickreme has referred me to Hakm Chand on *res judicata* at page 204 as regards the principle applicable to such a case, and I think, even apart from authority, it is quite clear that a purchaser at an execution sale is not privy to the execution-creditor or the execution-debtor. Even if the defendant is considered in the same position as the execution-debtors, it is quite clear that the execution-debtors were not bound by the order on the claim, although,

¹ (1902) 6 N. L. R. 279.

according to the practice of our Courts, execution-debtors are noticed as regards the inquiry into any claim. Consequently the defendant who purchased against the execution-debtors in this case under writ issued against them is no more bound than they themselves. Mr. Jayatileke, for the plaintiff, admits that there is no *res judicata* in the case as the learned Commissioner appeared to consider, but he strongly urged that the Fiscal's sale at which the defendant purchased was a nullity, on the ground that the Fiscal, who had or ought to have had notice of the fact that Valliamma's claim had been allowed, had no right to sell the share in question again under the writ issued a second time. I cannot agree with his contention. The Fiscal is not bound to make inquiries of that kind. He has got only to obey the order of the Court issued to him by means of the writ of execution. He has no right to decide questions of title, and even if he had such a right, the purchaser is not subject to any infirmity on account of the default or mistake of the Fiscal.

I set aside the judgment appealed from, and send the case back for inquiry and determination on the question of title, apart from the claim order of 1915. The defendant, I think, is entitled to the costs of the appeal.

Sent back.

1918.

DE SAMPAYO
J.

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