

## ISMAIL LEBBE v. OMER LEBBE.

1899.

February 28.

D. C., *Kalutara*, 1,747.

*Civil Procedure Code, s. 247—Seizure in execution—Claim by owner—Cause of action—Non-disturbance in possession—Effect of seizure by Fiscal.*

A seizure by the Fiscal is in law dispossession, and if the owner put in a claim to the property and that claim was disallowed, it is his duty to bring an action under section 247 of the Civil Procedure Code. If he does not do so within fourteen days from the date of disallowance of his claim, he is for ever precluded from alleging that the property was not liable to be sold under that seizure.

THIS was an action brought under section 247 of the Civil Procedure Code by an unsuccessful claimant, whose property had been seized in execution of a decree against a third person. The plaintiff was the owner of an undivided half of the divided northern portion of the garden called *Kandagodawatta*.

The Fiscal, at the request of the defendant, who was the execution-creditor of a third person, seized the whole of the northern portion of this garden, when the plaintiff put in a claim, but owing to illness he was unable to attend and sustain his claim, and his claim was dismissed. Thereupon he brought this action.

The parties led evidence as to their respective titles and acts of possession, and the District Judge found that the weight of the evidence was in favour of the conclusion that at the time of the seizure the plaintiff was in the actual possession of this property; but he dismissed his action "on the sole ground that he has no actual cause of action—he has not been disturbed in the possession of the property he claims, and he has suffered no damages by any act of the defendant."

Plaintiff appealed.

*Sampayo*, for appellant.

*Jayawardana*, for respondent.

28th February, 1899. BONSEN, C.J.—

It seems to me that the District Judge was quite wrong in the view he took of the effect of the seizure. A seizure by the Fiscal is in law dispossession, and if the owner put in a claim to the property and that claim is disallowed, unless within fourteen days from the date of disallowance he brings an action under section

1899. 247, he is for ever precluded from alleging that the property was  
February 28. not liable to be sold under that seizure.

**BONSER, C.J.** The proper order in this case is what the plaintiff ought to have  
prayed for, in his plaint, a declaration that he is entitled to have  
the undivided half share of the northern portion of the garden  
Kandagodawatta, which was seized by the Fiscal at the instance  
of the defendant, released from seizure.

LAWRIE, J., agreed.

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