

JUAN APPU v. DIOGU.

1896.
October 14.

D. C., Negombo, 1,965.

Husband and wife—Claim by wife to land decreed to plaintiff in action against husband—Civil Procedure Code, s. 328.

Where in an action against a husband for the recovery of certain land a decree was entered against him, and in execution the wife, who was in possession of the land, was removed therefrom, and she petitioned the Court under section 328 of the Civil Procedure Code, *held*, that she was entitled to have her petition inquired into, and her right to the land decided.

THE facts of the case appear in the judgment of BONSER, C.J.

Van Langenberg, for appellant.

Wendt, for respondent.

14th October. 1896. BONSER, C.J.—

This is an appeal from an order made by the District Judge of Negombo dismissing the appellant's petition. The appellant is a married woman. Her husband was the defendant in a suit brought by the respondent to recover certain lands. The appellant was no party to that action. Her husband disclaimed title, and a decree was made against him, and in execution of that decree the appellant was removed from the land. She asserts that the land is her own separate property; that she purchased it in 1892; and that her husband has nothing to do with it. She therefore presented a petition under section 328 of the Civil Procedure Code to establish her right. The District Judge refused to entertain this petition on the ground that she ought to have intervened in the action against her husband. He says that it is merely splitting hairs to say that she was not a party to the suit, and that she was not bound by the decree. As a matter of fact she was not a party, and I do not see how she could have insisted on her being made a party. She is entitled to have her right to this land decided, and the District Judge was wrong in dismissing her petition. The case is remitted to the District Court for trial. The appellant will have her costs of the appeal.

LAWRIE, J.—

I agree. The wife is not estopped either by the decree or by her conduct from raising the question of her ownership to the land.