

1901.  
February 26.

In the Matter of the Estate of SELLAMMA, Deceased.

KRAUSE v. PATHUMMA.

D. C., Galle, 3,314 (Testamentary).

*Power to administrator to sell immovable property—Under what safeguards this power should be exercised.*

*Per BONSER, C.J.*—The practice as to the sale of immovable property by an administrator in this Island differs from that obtaining in England, in that in this Island he is expressly precluded by the terms of his letters from selling immovable property without the special leave of the Court. That provision was inserted in letters of administration by authority of the Legislature in order to prevent the unnecessary sale of immovable property to the detriment of the persons entitled to that property. The administrator is entitled to sell all movables without asking anybody's leave, but if he wishes to sell immovable property, he must come to the Court and show conclusively that the sale is necessary for the payment of debts and costs of the administration. If the Court is satisfied that the movable property is insufficient, it would make an order for the sale of so much of the immovable property as would be necessary for the purpose, and only so much. It is not intended that the Court should give the administrator a general authority to sell the immovable property of the intestate.

I do not consider an administrator is justified in putting up a property for sale without taking measures to see that it is not sold at a great undervalue, and it seems to me that the Court ought to require the administrator, when he applies for leave to sell, to state under what conditions he proposes to sell, and to see that he does not sell under conditions of sale which may involve a sale at a ruinous sacrifice.

**I**N this case administration was granted to one Krause, the first respondent, as official administrator, on 6th August, 1900. On 8th August, 1900, the first respondent moved for and obtained a notice on Pathumma and the other heirs of the estate to show cause why the house and premises No. 44 in Church street, Galle, Fort, the boutique No. 23 in Galle Bazaar, and the movable property of the estate should not be sold. The first respondent, when he made this application to sell these properties, assigned as a reason for his application that the sale was necessary to enable him to "meet all expenses he has to incur." This notice was served on the appellants and the other heirs of the estate, and on the 27th August, 1900, the learned District Judge allowed the application to sell property on these terms: "The property may be sold."

The first respondent thereupon, through a licensed auctioneer, advertised the sale, and ultimately sold the property. The movables fetched Rs. 22.65. The boutique No. 23 in Galle Bazaar was sold for Rs. 715, and the house and premises No. 44, Church street, was purchased by Abubaker, the second respondent, for Rs. 560.

On 19th October notices were issued on the appellants and other heirs of the estate and the purchasers to show cause why the different sales should not be confirmed. The appellants consenting, the sale of the movables and the sale of the boutique No. 23, Galle Bazaar, were confirmed, but the appellants objected to the sale of house and premises No. 44, Church street, being confirmed. The matter of this objection came on for inquiry on the 28th November, 1900, and on the 8th December, 1900, the learned District Judge confirmed this sale. 1901.  
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Pathumma and the other heirs of the estate appealed.

*Bawa*, for appellant.

*Wendt*, for respondent.

26th February, 1901. BONSER, C.J.

This is an important case illustrating the hardships which the heirs of persons who die intestate suffer in consequence of careless administration.

A person named Sellamma died in 1900 intestate, possessed of certain movable and immovable properties. Amongst the immovable property was a boutique in Galle Bazaar and a moiety of a house and premises in Church street in Galle Fort. Proceedings were taken to obtain letters of administration to the intestate's estate by a person who appeared to have no interest in that estate, and in the result the Court granted letters of administration to the Secretary of the District Court of Galle. The administrator then proceeded to file an inventory and valuation of the property, and in this inventory the administrator set down the value of the premises in Church street at Rs. 1,250, and the value of the boutique in Galle Bazaar at Rs. 500, and various articles of furniture at a sum of Rs. 50. It does not appear that deceased had any debts, with the exception of a sum of Rs. 93.37 which she owed as the amount of a bill of costs in an action in which she was plaintiff. In this state of things the administrator applied to the Court for a notice upon the heirs to show cause why the immovable property should not be sold, on the ground that such a sale was necessary to recoup the expenses which the administrator would have to meet. No statement of debts or of the estimated expenses was submitted to the Court, nor was there any affidavit by the administrator to verify the statement that the sale of the immovable property, of the value according to his own estimate of Rs. 1,750, was necessary. On a later date it is recorded in the diary of the case that none of the heirs came forward, and then the District Judge made an order that the property be sold.

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*February 26.* that order. It ought not to have been made on the materials  
 BONSER, C.J. before the Court. There was nothing to show that the sale of the  
 immovable property was necessary. The Court had not then  
 before it even the fact that the sum of Rs. 93.37 was due from the  
 intestate's estate.

The practice as to the sale of immovable property by an administrator in this Island differs from that obtaining in England, in that in this Island he is expressly precluded by the terms of his letters from selling immovable property without the special leave of the Court. That provision was inserted in letters of administration by authority of the Legislature in order to prevent the unnecessary sale of immovable property to the detriment of the persons entitled to that property. The administrator is entitled to sell all movables without asking anybody's leave, but if he wishes to sell immovable property, he must come to the Court and show conclusively that the sale is necessary for the payments of debts and costs of the administration. If the Court is satisfied that the movable property is insufficient, it would make an order for the sale of so much of the immovable property as would be necessary for the purpose, and only so much. It is not intended that the Court should give the administrator a general authority to sell the immovable property of the intestate.

However, in this case, a general authority was given, and it appears that these pieces of immovable property were put up for sale by public auction, and that the boutique in Galle Bazaar, which was valued at Rs. 500, fetched Rs. 750, while the Church street property only fetched Rs. 500. There is nothing in the record to show under what conditions of sale this property was sold, but it would appear by the price realized by the sale of the Church street property that no reserve price was set upon it.

I do not consider an administrator is justified in putting up a property for sale without taking measures to secure that it is not sold at a great undervalue, and it seems to me that the Court ought to require the administrator, when he applies for leave to sell, to state under what conditions he proposes to sell, and to see that he does not sell under conditions of sale which may involve a sale at a ruinous sacrifice. The sale of the Church street property has not been completed.

The administrator called upon the heirs to show cause why the sale of this property should not be confirmed. The heirs did not object to the Galle Bazaar property being sold, but they strenuously objected to the sale of the Church street property being confirmed on the ground that it was not necessary, and that it was

sold much below its value. No conveyance has been executed, and there is no evidence of any legally binding agreement. But assuming there was a properly drawn up contract between the administrator and the purchaser, yet when the matter is brought before the Court the question arises whether this Court ought to affirm what would be unfair and unjust to the heirs. The position of the purchaser is that he has a contract for the sale of the property made with the administrator, and that that contract has not been carried out, and he can ask for specific performance or damages. Specific performance is a matter of discretion with Courts of Equity, and they will never grant specific performance if the result is to cause injustice.

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It seems to me that the sale ought not to be confirmed, when it appears that the sale was unnecessary and was one for which leave was improperly given in the first instance.

The appeal will therefore be allowed without prejudice to any remedy which the purchaser may have against the administrator.

BROWNE, J.—Agreed.

