

AMADORIS v. NENDA.

(ADRIS MENDIS, Claimant in Execution.)

C. R., Galle, 6,173.

1902.

August 4.

Order under s. 244, Civil Procedure Code, releasing property from seizure made under misapprehension—Power of Supreme Court in revision..

The Supreme Court will exercise its power of revision in order to set aside an order releasing property from seizure, when such order is wholly based on a misapprehension.

A LAND, Batadandugodawatta, was seized in execution against the judgment-debtors. Several claimants appeared, among them being one Adris Mendis, whose claim, on the face of it, appeared to be to shares in the land seized. The Commissioner of Requests, before inquiring into the claims, procured a report and a sketch from the vidane arachchi to elucidate the boundaries of the land seized and the lands claimed. This report elicited the fact that Adris Mendis did not intend to claim the land seized, but only wished to have his own land, which adjoined it and bore the same name, Batadandugodawatta, distinguished. The land seized was called by other names as well. The claim was subsequently inquired into by the Court, another officer having meanwhile succeeded as Commissioner of Requests.

The claimant and the writ-holder both produced deeds in evidence. One deed No. 4,320 produced, not by the claimant but by the writ-holder and in favour of a third party, for the purpose of throwing light on the question of boundaries, related to a one-fourth share in the land seized.

1902. By misapprehension the Commissioner supposed that it was
August 4. in favour of the claimant, and on 7th January, 1903, he allowed
WENDT, J. the claim to the extent of one-fourth. None of the deeds pro-
duced by the claimant related to the land seized.

The proctor for the writ-holder on 17th January, 1902, moved the Court to re-consider the order on the ground that it had been evidently led into error by inadvertence in supposing that the deed No. 4,320 was in favour of the claimant.

The Commissioner held he had no power to review his order.

The Supreme Court was then applied to for revision.

Samarawickrama, for the applicants.

The claimant did not appear though served with a notice.

The Supreme Court varied the order.

4th August, 1902. WENDT, J.—

Upon a writ of execution issued in this case a piece of land was seized, upon which one Adris Mendis claimed half, one thirty-sixth, and one twenty-fourth as belonging to himself and not to the execution-debtor. Certain deeds were produced at the inquiry in support of the claim, among them a deed bearing No. 4,320. This was produced for some collateral purpose, because it dealt not with the land seized, but apparently with an adjoining land; but the Commissioner under a misapprehension upheld the claimant's title to one-fourth of the land as though that share had been conveyed by that deed. This Court has been moved on behalf of the execution-creditor to set aside that order in revision.

The Commissioner informs this Court that he was in error in dealing with deed No. 4,320, as though it applied to the land in question.

The claimant has not appeared in response to the notice of the present motion, and I order that the order of the Commissioner dated 6th January, 1902, be varied by rejecting the claim of Adris Mendis altogether and directing him to pay the execution-creditor the costs consequent on the claim.
