

PONNAMPALAM v. APPUKKUDY.

1904.
July 11.

C. R., Jaffna, 3,302 A.

Guardian ad litem—Action against minor represented by guardian ad litem—Fiscal's sale of minor's property—Effect of such sale.

The sale of a minor's property held under a writ of execution issued in a case wherein the minor was represented by a guardian *ad litem* is good and valid.

A guardian *ad litem* represents the minor not only for the purpose of conducting the case, but also for purposes of a sale in execution of the minor's property.

THE plaintiff claimed by right of inheritance from one Tankamma, a minor, a portion of a land called Alvanvayal, from which he alleged the defendant had unlawfully ousted him. The defendant pleaded that the minor's share, being put up for sale under a writ of execution issued in case No. 17,789, D. C., Jaffna (to which the minor was a party, represented by her mother as guardian *ad litem*), was purchased by the defendant, and that the Fiscal conveyed the said share to the defendant on 27th February, 1889.

At the trial, the only issue agreed between the parties was whether the sale of the minor's property under that writ was good and valid. It was agreed that if this issue was decided in the negative, the plaintiff should be declared entitled to inherit the said share from the minor, and if in the affirmative judgment should be given for the defendant and the sale under the writ upheld.

The Commissioner, after hearing the arguments of counsel on both sides, held that the sale was valid and passed title to the defendant.

The plaintiff appealed.

A. Drieberg, for the plaintiff appellant.

H. A. Jayawardene, for the defendant respondent.

11th July, 1904. SAMPAYO, A.J.—

The plaintiff claims a divided portion of a land called Alvanvayal by inheritance from one Tankamma, who died in 1888 intestate. The whole land Alvanvayal was the subject of a partition suit, to which Tankamma, who was then a minor, was a party represented by his mother as guardian *ad litem*, and in that action the divided portion was allotted to Tankamma as her share in the partition. The Court decreed the costs of the action to be borne by the parties *pro rata*, and for the recovery of Tankamma's share of the costs the portion of the land allotted to

1904. Tankamma was seized and sold in execution, and was purchased
 July 11. by the defendant in 1888.

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There were a great many points raised in the pleadings, but at the trial the parties agreed to submit for decision the single question whether the Fiscal's sale of the minor Tankamma's share of the land was valid. The Commissioner of the Court of Requests having decided this issue in the affirmative and dismissed the action, the plaintiff has appealed.

It was argued for the plaintiff that a guardian *ad litem* only represented the minor for the purpose of conducting the case, and not for the purposes of a sale of the minor's property, and the well-known authorities on the limitation of a guardian's powers in the disposal of the minor's property were cited in argument. These authorities have no bearing on the present question, for while they relate to the guardian's own acts over the minor's property, the Fiscal's sale in this case took place in consequence of the decree of Court and by means of the process of Court.

In my view a guardian *ad litem* represents the minor for all the purposes of the action, including the execution of the decree that may be passed by the Court. No authority has been cited to the effect that the sale of a minor's property in an action where the minor is represented by a guardian *ad litem* is void. On the other hand, the case *Hari v. Narayan* (I. L. R. 12, Bomb. 427) shows that under the Indian Procedure Code the provisions of which with regard to actions by and against minors are similar to those of our Code, execution of a decree against a minor may be effected by process in the ordinary way.

In my opinion, there is no good foundation for the contention of the appellant, and I affirm the judgment with costs.

