SILVA *v.* KIRIGORIS.

C. R., Galle, 2,397.

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Civil Procedure Code, ss. 241, 243, 247—Land seized in execution of judgment—Purchase of such land from persons other than execution-debtor—Right of such purchaser to prefer claim under s. 241, or to maintain action under s. 247, upon disallowance of his claim.

A person who had purchased a land after it had been seized in execution is not entitled to prefer a claim under section 241 of the Civil Procedure Code, or upon the disallowance of such a claim to maintain an action under section 247 to establish his right to the property.

IN this action the plaintiff sought to have seven-eighths of a land released from seizure made under a writ of execution issued by the defendant in case No. 1,979 against one Princinahamy and Jayasinghe.

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The land was seized on the 27th June, 1901, and the plaintiff, having bought seven-eighths of it on the 29th June, 1901, from certain persons other than the execution-debtors, preferred his claim in that case on the 10th July, 1901. It was disallowed on the 29th January, 1902. Hence the present action.

The Commissioner (Mr. J. D. Mason) held that, as the plaintiff had purchased the land two days after the seizure, he had no interest in, and was not possessed of, the land at the date of the seizure, and could not therefore maintain an action under section 247 of the Procedure Code.

The plaintiff appealed against the decree of dismissal.

The case came on for hearing on 31st March, 1903.

H. J. C. Pereira, for plaintiff, appellant.

E. Jayawardene, for defendant, respondent.

Cur. adv. vult.

6th April, 1903. WENDT, J.—

The question in this case is whether a man who purchased land after it was seized in execution can prefer a claim under section 241 of the Civil Procedure Code, or, upon the disallowance of such a claim, maintain an action under section 247.

The present defendant issued a writ of execution against one Principahamy and one Frederick Jayasinghe, and thereupon the Fiscal seized the entire land on 27th June, 1901, and advertised it for sale on the 28th July. The present plaintiff on the 29th June, 1901, purchased from four persons unconnected with the judgment-debtor seven-eighths of the premises, exclusive of one-third part of the planter's share. He preferred a claim on 10th July, 1901, to the seven-eighths share which claim the Court disallowed on 29th July, 1902. He then brought the present action. The Commissioner dismissed it with costs on the ground that at the date of seizure the plaintiff had no interest in, and was not possessed of, the property seized.

In appeal it was argued for the plaintiff that the words of section 241 "seizure or sale" contemplated the possibility of a person being entitled to resist the sale, although unable to object to the seizure. That may be true; but reading that section with sections 243 and 244, I think it is quite clear that the claimant's or objector's rights must in every case be referred to the date of seizure. It was also argued for the appellant that just as in an action under section 247 the plaintiff may succeed on the question of title, although upon the claim inquiry he was rightly defeated on the question of possession, so the plaintiff

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may succeed in the action on a title which he acquired subsequent to the seizure; but here again the title which has to be adjudicated upon is the title as it stood at the date of seizure.

I agree with the opinion of Withers, J., in the case of *Wijeywardane v. Maitland* (*3 C. L. R. 7*) that the phrase "right to property" in section 247 must be construed to mean such right as the claimant or objector was entitled to set up under section 243. See also the case of *Abdul Cader v. Annamalay* (*2 N. L. R. 166*).

In the case of *Harishankar Jebhai v. Naran Karan* (*1. L. R. 18, Bom. 260*) the claimant had succeeded in having the attachment of the land removed, and, when the decree-holder brought his action under the enactment corresponding to our section 247, pleaded that he had acquired a prescriptive title to the land. It appeared, however, that the prescriptive term had only run out subsequent to the attachment, although prior to the institution of the action. The High Court held that the action, being in effect one to "set aside" the order directing the removal of the attachment, must be determined according to the rights of parties at the date of the order. That is to say, in judging whether the order was right or wrong, you cannot take into account some right which accrued subsequently to the date of the order, something which the Court had not and could not have had before it when it passed the order. Similarly, in judging whether the seizure was right or not, the claimant cannot be heard to say it was wrong because of some right of his which did not accrue to him till after the seizure was effected. I think the decision of the High Court would have been the same if the prescriptive period had been completed prior to the date of that order if only it was still subsequent to the date of the attachment.

However, whether my reading of this Indian decision is correct or not, I think the construction of our own Code is quite clear, and it is opposed to a well-established principle to recognize any change of the rights of parties after the subject-matter has once become *in custodia legis*. The Commissioner was right in deciding for the defendant, and I therefore dismiss the appeal with costs.