Present: Wood Renton C.J. and De Sampayo A.J.

FERNANDO *v.* NAGAPPA CHETTY.

102—D. C. Ratnapura, 1,566

Fiscal's sale—Stale application for conveyance.

Mere lapse of time does not deprive a purchase at a Fiscal's sale of the right to ask for a conveyance.

Facts which Court should take into consideration before ordering a conveyance to be granted indicated.

THE facts are set out in the judgment.

Balasingham, for the appellant.—The District Judge is wrong in refusing to direct the Fiscal to issue a certificate on the ground that the sale had taken place long ago. Staleness is not by itself a sufficient reason to refuse the application (*Arnolis v. Sutia* [1]). If in the interval others had acquired a title by prescription, their rights would not in the least be affected by the granting of a conveyance. These principles were often acted upon in granting stale applications for letters of administration, and are equally applicable to stale applications for a Fiscal's conveyance.

Counsel also referred to *Jaldin v. Nurma.* [2]

October 13, 1914. WOOD RENTON C.J.—

This is an appeal against a refusal of the District Judge of Ratnapura to direct the Fiscal to execute a Fiscal's transfer in favour of the appellant as regards a land which had been purchased by his father at a Fiscal's sale in the year 1879. The appellant, in the affidavit in support of his application in the District Court, states that the amount of the purchase money had been duly paid; that his father had died about two years ago leaving him as his sole heir; and that he was the only person now entitled to a Fiscal's transfer of the land. The District Judge declined to give effect to the application upon the ground that the sale was " far too old. " The applicant appeals, as I have said, from that order. It is now settled law—see the case of *Arnolis v. Sutia*[1]—that mere lapse of time does not deprive a purchaser at a Fiscal's sale of the right to ask for a conveyance. But it was pointed out by this Court in the case of *Jaldin v. Nurma,*[2] in which the same principle was laid down, that when a purchaser at a Fiscal's sale delays to obtain a conveyance, and when the Fiscal declines to give him one without an order from

[1] *(1910) 7 Tamb. 64.*

[2] *(1892) 1 S. C. R. 187.*

the Court, the Court being applied to would probably refuse to interfere, unless it was satisfied that the applicant had had possession by virtue of his purchase, and that no rights adverse to him had been created by his delay. The appellant's affidavit is absolutely silent in regard to the question as to who has been in possession of the land since the date of the Fiscal's sale, and it contains no statement showing that. in the interval between 1879 and the date of the application, there might not have been created, or have grown up. rights which are adverse to the appellant. In view of the law as declared by the Supreme Court in *Arnolis v. Sutia*,[1] the learned District Judge was, I think, wrong in summarily dismissing the appellant's application on the ground of its staleness, and the appellant may fairly be allowed an opportunity of showing, if he is in a position to do so, that, in spite of the long delay that occurred. the Fiscal's transfer ought still to be granted to him. I would propose to set aside the order appealed against, and send the case back to the District Court for further inquiry and adjudication. The execution-debtor ought to have notice of the application. It may well be that he may desire to set up defences to it which are not dependent on the question of possession alone. Moreover, the District Judge ought to consider the question whether the estate of the appellant's father has been administered, and if it has not, whether it ought to be administered before effect can be given to the present claim. The questions of the alleged death of the appellant's father. and whether or not the appellant is his sole heir, as stated in the affidavit, must be taken account of. The District Judge should also consider who has had possession of the land since 1879, and whether or not any rights adverse to the appellant's claim have arisen in the interval. The whole burden of proof in regard to the matters stated in his affidavit, and the additional points which I have just mentioned, rests upon the appellant. My brother De Sampayo has just directed my attention to the fact that the only evidence as to what was seized and sold, at present before us in the record, is the statement of the vaguest character in the return to the writ. This matter ought also to be freed from doubt.

DE SAMPAYO A.J.—I agree.

Set aside.

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[1] (1910) 7 Tamb. 64.