

1917.

Present : Wood Renton C.J. and Shaw J.JUAN APPU *v.* WEERASENA.

70—D. C. Galle, 14,358.

Writ against administratrix — Fiscal's sale of intestate's property — Subsequent sale by administratrix of same property with order of Court—Prior registration of conveyance from administratrix.

On a writ against an administratrix certain property of the intestate was sold by the Fiscal on November 15, 1915, and bought by the plaintiff, who obtained the Fiscal's transfer on January 7, 1916, and registered it on the same day.

On November 1, 1915, the administratrix obtained an order of Court in the administration proceedings to sell the same property, and on December 3, 1915, a conveyance of the property in favour of the defendant was executed by the administratrix, and it was registered on December 6, 1915.

Held, that plaintiff had a superior title.

*Aserappa v. Weeratunga*¹ and *Tikiri Banda v. Loku Banda*² followed.

THE facts are set out in the judgment.

Bawa, K.C. (with him *M. W. H. de Silva*), for appellant.

H. J. C. Pereira, for respondent.

Cur. adv. vult.

May 29, 1917. SHAW J.—

The plaintiff, a creditor of one Odris de Silva Weerasena, who died in June, 1914, obtained judgment against the administratrix in case D. C. Galle, No. 13,320, and issued execution on his judgment.

Certain property which formed part of the intestate's estate, and which is now in dispute in the present action, was seized by the Fiscal and sold under the writ on November 16, 1915, the plaintiff himself becoming the purchaser. The sale was confirmed by the Court on January 4, 1916, and on January 7, 1916, the plaintiff obtained a Fiscal's transfer for the property, and registered it on the same day in the Land Registry.

Prior to this transfer and registration the administratrix had on November 1, 1915, obtained an order of the Court in the administration proceedings to sell the same property, and on November 27, 1915, the property was sold under the order and

¹ (1911) 14 N. L. R. 417.

² (1911) 15 N. L. R. 63.

was bought by the defendant. This sale having been confirmed by the Court on December 3, 1915, a conveyance of the property was executed in favour of the defendant by the administratrix on the same day, and registered by him on December 6, 1915.

The present action is brought to decide the rival claims of the plaintiff and defendant to the property, and the District Judge has decided in favour of the plaintiff. From this decision the defendant appeals.

The position is that the actual sale by the Fiscal to the plaintiff is prior in date to the sale to the defendant, but the conveyance to the defendant is prior to the Fiscal's transfer to the plaintiff, and was registered before it.

By reason of the provisions of section 289 of the Civil Procedure Code the plaintiff, upon obtaining the confirmation of the sale and the Fiscal's transfer, must be deemed to have been vested with the legal estate from the date of the sale, namely, November 16, 1915, and the administratrix divested of title upon the same date. Apart, therefore, from any question of registration under the Registration Ordinance, the plaintiff would have the better title, the administratrix having had no title on November 27, the date of his conveyance to the defendant.

I agree with the Judge that the Full Court decision in the case of *Aserappa v. Weeratunga et al.*¹ is conclusive in favour of the plaintiff. In that case there was a conflict between the purchasers at two Fiscal's sales; the defendant's sale was prior in date to that to the plaintiff, but the plaintiff's transfer and registration were prior in date to those of the defendant. The Court held that the defendant's title prevailed. The reason for the decision was that section 17 of the Registration Ordinance only applies to give priority to a subsequent deed which has obtained prior registration, and that the plaintiff's transfer being prior to the defendant's, he gained no benefit from the provisions of the section. It was contended in that case that the rival transfers, by reason of the provisions of section 289 of the Civil Procedure Code, related back to the dates of sale, and that, therefore, the plaintiff's transfer was subsequent to the defendant's, although executed at a later date. The Court, however, negatived this contention, holding that the doctrine of relation back under that section applied to the question of the vesting of the legal estate upon a sale in execution, and did not affect the date of a deed the priority of which it was sought to establish under section 17 of the Registration Ordinance.

A similar decision was given in the subsequent case of *Tikiri Banda v. Loku Banda*,² where the competition was between a Fiscal's conveyance and a deed executed by the judgment-debtor and registered prior to the Fiscal's transfer but subsequent to the Fiscal's sale.

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The facts of the present case are indistinguishable from those of the cases I have referred to, the defendant's deed and registration both being prior in date to the plaintiff's Fiscal's transfer. The point being, in my opinion, absolutely concluded by the Full Court decision, I do not think it necessary to refer to the other cases on the point cited at the hearing.

The further objection to the plaintiff's title was taken on the appeal by counsel for the appellant, based on the case of *Hendrick v. Deen*,¹ that there is no proof that the Fiscal's seizure was registered under section 237 of the Civil Procedure Code. Whether this is the case or not I do not know, but no objection was taken to the plaintiff's title on this ground, either in the answer, during the argument in the Court below, or in the petition of appeal itself, and it is too late for the defendant to take any such point now.

With regard to the other point taken by the defendant, namely, that the sale by the administratrix, being a sale by order of the Court, takes priority over the Fiscal's sale, I agree with the finding of the Judge that, although the order for sale by the Court may prevent the administratrix from transferring title without the authority of the Court, it can have no effect as against a sale made adversely to her in the creditor's action.

I would dismiss the appeal, with costs.

WOOD RENTON C.J.—I agree.

Appeal dismissed.