Present: Wood Renton J.

1911.

ELIATAMBY *v.* APPUKUTTY.

207—C. R. Batticaloa, 15,448.

Sale for default of Local Board tax—certificate of sale—Presumption as to regularity—Ordinance No. 19 of 1905.

The Court is not bound to draw the statutory presumption in favour of a person holding a certificate of sale granted under Ordinance No. 19 of 1905 in respect of property sold for non-payment of Local Board tax, if there is anything which arouses its suspicion, or suggests the probability that there was a departure from the regular and proper course of business in any particular case.

THE facts are set out in the judgment.

Bawa (with him *Balasingham*), for appellant.—The Court should not have dismissed plaintiff's action unless it was prepared to hold

[1] (1895) 1 Q. B. 208.
[2] (1910) 1 Chancery 701.
[3] (1838) Morgan's Digest 231.

1911.

Eliatamby v. Appukutty

that the plaintiff is not the owner of lot 59A. The certificate of sale produced by the plaintiff proves plaintiff's title until defendant leads evidence to disprove the title. *Goonesekera v. Teberis.*[1]

Allan Drieberg (with him *Fernando*), for the defendant, respondent.—The Court is not bound to hold that the plaintiff is the owner of lot 59A from the mere production of the certificate of sale. See the judgment of Wendt J. in *Goonesekera v. Teberis.*[1]

Cur. adv. vult.

July 20, 1911. WOOD RENTON J.—

The plaintiff-appellant in this action, alleging himself to be the owner of a garden bearing Local Board assessment No. 59A, situated at Amirtagally, in the District of Batticaloa, claims a right of way, either by prescription or as of necessity, by a path leading from the garden through the property of the defendant-respondent to a public lane. The respondent alleges that he is himself owner of a lot of land bearing assessment No. 59, and that the piece of land described in the plaint as bearing assessment No. 59A forms a part of it. The appellant sets up title to the garden 59A by right of purchase upon a certificate under Ordinance No. 19 of 1905 dated October 15, 1907. The respondent alleges that the plaintiff, knowing that lot No. 59A formed part of lot No. 59, fraudulently caused the assessor appointed by the Local Board of Batticaloa to assess for the year 1905 the lot in question as a separate land, stating that it belonged to his mother and one Vichchar Mariamuttu. The appellant's mother and Vichchar Mariamuttu made default in payment of the tax on the land, and the appellant thereupon, says the respondent, with the intention of fraudulently depriving the respondent of it, caused the land to be sold for non-payment of tax, and purchased it himself, but never entered into possession of it. It is obvious that the appellant's claim to a right of way is dependent on his success in making out his title to lot No. 59A. For this purpose he naturally relies on his certificate of sale, and the decision of the Supreme Court in *Goonesekera v. Teberis*[1] shows that his possession of such a certificate creates in his favour a presumption that the sale was duly made under the Ordinance; that the tax for non-payment of which the sale purported to be held was, in fact, due; and that default was made in payment of it. The Court is not bound, however, to draw this presumption, and is entitled to call for proof if there is anything which arouses its suspicion, or suggests the probability that there was a departure from the regular and proper course of business in any case in which reliance is placed on a certificate of sale. In the present case the learned Commissioner of Requests has declined to draw the statutory presumption on that

[1] *(1906) 10 N. L. R. 18.*

ground, and has dismissed the appellant's action with costs, reserving to him, however, the right to establish his title to lot No. 59A in a proper action. After careful consideration I have come to the conclusion that the decision of the Commissioner on this point is right. The circumstances to which Mr. Allan Drieberg called my attention in his argument on behalf of the respondent, namely, the respondent's possession of lots Nos. 59 and 59A from 1891 onwards as a separate garden; the insignificant amount of the tax, 82 cents, for default in payment of which the land was sold; the fact that this default was apparently made in payment of the very first tax that was due; and also the absence of any line of demarcation between the two lands, are, in my opinion, sufficient to displace the statutory presumption, and to throw the appellant back on the ordinary remedy of an action to establish his title. The appellant's counsel contended that the respondent, as he had neither a paper title nor title by prescription, had no *locus standi* for the purpose of attacking the appellant's title under his certificate of sale. The respondent does, however, allege himself to be the owner of the land, and he claims to have now been in possession of it for a period of twenty-two years. I think that these circumstances are sufficient to confer upon him whatever *locus standi* is necessary. I dismiss the appeal with costs. The judgment will, of course, not prejudice the appellant's right to claim a right of way, either by prescription or as of necessity, if he succeeds in establishing his title to the dominant land.

Appeal dismissed.