Present : Ennis J.

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IBRAHIM *v.* BAWA SAHIB *et al.*

2—C. R. Trincomalee, 8,129.

Claim to land rejected as claimant had no title at date of seizure—Subsequent conveyance in favour of claimant—Action under section 247, Civil Procedure Code—Objection that action cannot succeed as plaintiff had no title at date of seizure—Application to add vendor to plaintiff as added plaintiff—Application refused—Appeal—Right to bring action under section 247—Order that action be continued as an action rei vindicatio—*Technical objections in small cases*—Res judicata.

A claim to a land was rejected as the conveyance in favour of the claimant was subsequent to the seizure. The claimant brought an action under section 247 of the Civil Procedure Code. It was objected in this action that he had no title at the time of the seizure. He then applied to have his vendor added as plaintiff. The Court refused the application. The claimant's proctor then withdrew from the case, and the case was dismissed.

Held, that as the claimant had no title at the date of seizure, the action under section 247 could not succeed. The failure to bring an action under section 247 does not make the order at the claim inquiry conclusive as to the claimant's title in the circumstances. The Supreme Court allowed the claimant to proceed with the action as an action for declaration of title.

H. V. Perera, for appellant.

J. S. Jayewardene, for respondents.

March 5, 1924. Ennis J.—

This action purported to be brought under section 247 by an unsuccessful claimant. It appears, however, that the claimant lost his claim because he was unable to establish that he had an

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interest in the property at the date of the seizure, which appears to be a condition precedent to his becoming a claimant for the purpose of sections 243-247 of the Civil Procedure Code. He obtained a conveyance after the seizure. Now, although this claim was disallowed, he brought his action under section 247. When it was objected that he had no title at the time of the seizure, he applied to have his vendors added as plaintiffs. The application was not made until the date of trial, and there was nothing to show that the vendors were willing to be plaintiffs. The learned Commissioner accordingly refused the application, whereupon the proctor for the claimant said he could not go on with the case. The learned Commissioner accordingly dismissed the claimants action. An appeal is presented from this order.

It was suggested first that the case of *Silva v. Nona Hamine*[1] is not on all fours with the present case, and that the ruling that an unsuccessful claimant cannot maintain an action under section 247, if he had no right to the property at the date of the seizure, would not hold good in the present case. It is true that case is not entirely on all fours with the present one, because there the plaintiff had no title at the time the action was brought, but however, the *ratio decidendi* in that case is to the effect that under section 247 no action can succeed, and in fact no claim could suceed, unless the claimant were a person who had an interest in the property seized. Holding that to be the true meaning of this case one must go further and say that in a case where a person cannot be a claimant because he had no interest in the property, he cannot be bound by the last paragraph of section 247 which would make an order rejecting his claim *res adjudicata* against him. The order rejecting the claim was based not on his vendor's title, but on the fact that the claimant had no title at the date of the seizure, and no more. That being so, there would seem to have been some misunderstanding in the Court below when the plaintiff's proctor declined to go on with the case.

I would allow an indulgence in this mater. I set aside the order appealed from, and allow the claimant to proceed with this action as an action for declaration of title, and not as an action under section 247. As an action for a declaration of title, it is not necessary to join his vendors as plaintiffs. There is no reason, and no inconvenience in this small case, in allowing the action to be converted from one form of action to another, and it saves costs, and both parties should have been aware of this.

I would send the case back for further proceedings.

All costs to abide the event.

Set aside.

[1] *(1906) 10 N. L. R. 44.*