1933 *Present :* **Dalton A.C.J. and Koch A.J.**

DE COSTA *v.* LOWE *et al.*

254—D. C. Chilaw, 8,374.

Estoppel—Property sold in execution of writ—Judgment-creditor estopped from denying that property belonged to judgment-debtor—Evidence Ordinance, s. 115.

A person, who as judgment-creditor seized a land, under a writ taken out by him, is estopped from denying in a subsequent action that the land was the property of the person against whom he caused it to be seized and sold.

APPEAL from a judgment of the District Judge of Chilaw.

H. V. Perera, for plaintiff, appellant.

Ranawaka, for defendant, respondent.

October 6, 1933. DALTON A.C.J.—

The plaintiff brought this action for declaration of title to 10 parrahs of a land called Neruppandi Mullavayal. The question arising on this appeal is whether he is estopped, by his conduct in a certain previous case to which I will refer, from denying that the land that he claims was the property of A. J. Fernando from whom the defendants derive their title.

It appears that in District Court, Chilaw, case No. 5,525, the plaintiff was the judgment-creditor and he had the property in question in this case seized under a writ taken out by him, as belonging to the estate of A. J. Fernando. That property was then put up for sale, and he himself, by his representative, was a bidder at the sale, but it was knocked down to one Mary Elizabeth Fernando, who is the wife of the second added defendant.

There is not the slightest doubt upon the facts that the plaintiff set up that the property was the property of A. J. Fernando. He gave written instructions through his proctor in that case to issue process against the land in question and he was intending himself to buy the land. It seems to me that as clearly as possible he represented to everybody at that sale that he, at any rate, was not the owner, and that as far as he was aware A. J. Fernando was the owner. The learned Judge, on these facts, has held that the plaintiff has, by his conduct, represented that A. J. Fernando was the owner of the whole field in question which was seized. It follows from that finding that he has represented that he, the plaintiff, was most certainly not the owner of the field in question.

The facts of this case seem to me to fall within the provisions of section 115 of the Evidence Ordinance, to the effect that where a person has by his acts intentionally caused another person to believe a thing to be true and to act in that belief, he is not to be allowed in any suit or proceeding by himself or by his representative to deny the truth of that thing.

It was urged in the course of this appeal that he did not "intentionally" cause Mary Elizabeth Fernando to believe that the property was the property of A. J. Fernando, but judging his intention from his acts he intentionally caused the land to be seized as the property of A. J. Fernando, had it put up for sale as such, and no doubt intended bidders at the sale to believe the same. He himself bid for it as the property of another, and the purchaser, Mary Elizabeth Fernando, purchased it on his representation, in the proceedings that he took, that it was the property of another and not the property of himself. It seems to me that on the facts here the case falls within the section I have referred to, and the appellant, the plaintiff, was estopped from denying the title of A. J. Fernando.

We have been referred in the course of the argument to a case, *Sadris Appu v. Cornelis Appu*[1]. That case differs from the one before us in respect of one particular circumstance. There the judgment-creditor seized his own property as property belonging to the judgment-debtor, but he became aware of the fact that it was his own property shortly before the sale. He, nevertheless, allowed the sale to go on and it was knocked down to the purchaser.

There are, however, certain principles laid down by the learned Chief Justice in that case which seem to me to govern this case, which is now before us. It is true there is an aggravating circumstance in that case which does not exist in the case before us, but it seems to me on principle that case would also apply to the case now before the court. Even, however, if it did not so apply, as I have stated, in my opinion the case before us falls within the provisions of section 115, and the appeal must, therefore, be dismissed with costs.

KOCH A.J.—I agree.

Appeal dismissed.