

1936

Present : Moseley J. and Fernando A.J.

ARUNACHALAM CHETTIAR *v.* PAULIS APPUHAMY.

142—D. C. Colombo, 51,848.

Mortgage decree—Time fixed for payment of money—Court's power to extend time on cause shown—Civil Procedure Code, s. 343.

Where sufficient cause is shown for stay of the sale of property in execution of a mortgage decree a Court has power to grant an extension of time for payment of money due under the decree.

Ramanathan v. Ibrahim (36 N. L. R. 445) referred to.

APPEAL from an order of the District Judge of Colombo.

H. V. Perera (with him Wickremanayake), for defendant, appellant.

N. Nadarajah, for plaintiff, respondent.

Cur. adv. vult.

November 10, 1936. FERNANDO A.J.—

In this case a decree was entered on March 28, 1934, directing that order to sell the mortgaged property was not to issue either until the defendant makes default in the payment of certain sums which he agreed to pay on certain dates, or till a period of two years from the date of the decree has expired. That period having expired in March, 1936, the plaintiff applied for an order to sell, and defendant applied for a further period within which he might pay the money. The learned District

Judge held it was not open to him to enlarge the time fixed in the decree itself. It is true that the decree was entered of consent, but although the consent motion provided that in the event of the full claim not being paid within the period of two years, commission to sell was to issue forthwith without notice to the defendant, that provision was not entered in the decree, and I take it that this was omitted advisedly.

The District Judge relies on the judgment of this Court in *Ramanathan v. Ibrahim*¹ where Akbar J. set aside the order of the District Court allowing the judgment-creditor nine months' time to pay, because as he said "the proper course would have been to fix the conditions under which the sale was to be carried out, and in those conditions to fix the period within which the balance due to the judgment-creditor was to be paid". The case was therefore, sent back in order that the District Judge might fix a period after which the sale is to be carried out.

The direction thus given appears to my mind to be inconsistent with the earlier portion of his judgment in which he states that the conditions of sale must be with reference to the original decree, and must not have the effect of altering or contradicting or varying the period fixed by the Court in the original decree. Nor is this case any authority for the proposition that in the case of a mortgage decree the provisions of section 343 of the Civil Procedure Code do not enable the Court for good reason to stay execution of the decree. That section was held in *Faulkner v. Soysa*² to apply to sales under mortgage decrees entered under section 201 of the Civil Procedure Code, and I see no reason for doubting that the section applies in all cases of execution of orders entered by Court. It is true that in the ordinary course, execution will be allowed by Court unless due cause is shown why execution should in any particular case be delayed, and in this case the evidence led for the defendant does indicate that the plaintiff placed certain objections in the way of the defendant raising a loan on the mortgaged properties, and the learned District Judge found that the plaintiff was probably irritated by the fact that the defendant had filed an action against him. In the circumstances of this case we direct that an order to sell should not issue for a further period of six months from the date of the receipt of the record in the District Court and that the title deeds and plans of the mortgaged lands should be deposited by the plaintiff within a week of the record reaching that Court with the Secretary, so that the defendant's proctor might have access to them in order to apply for a loan, or to forward them to the State Mortgage Bank or to any other likely creditor. It will be clearly understood that the defendant's proctor if he takes the deeds from the Secretary will be personally responsible to see that the same are returned to the Secretary within a reasonable time, and in any event before the expiration of the period of six months already referred to. As execution has been stayed as an indulgence to the defendant, he will not be entitled to the costs of this appeal or of the application to the District Court, and each party will bear his own costs of these proceedings.

MOSELEY J.—I agree.

Set aside.

¹ 36 N. L. R. 445.

² 26 N. L. R. 449