1905.
April 10.

Present: Mr. Justice Moncreiff and Mr. Justice Grenier.

ENDRIS *v.* ADRIAN APPU.

D. C., Galle, 7,055.

Land acquisition case—Decision as to title to a portion of the land—Res judicata *as to title to the rest of the land.*

A decision by a competent judicial tribunal on the rights of parties to a proceeding under the Land Acquisition Ordinance, relating to a portion of a land, operates as *res judicata* between the parties as to the rights to the rest of the land.

APPEAL by the plaintiff.

Dornhorst, K.C., for the plaintiff, appellant.

Bawa, for the defendant, respondent.

Cur. adv. vult.

April 10, 1905, MONCREIFF J.—

I am of the same opinion. The learned Judge was bound by the decision in No. 61, D. C., Galle, 2,383. It is true the decree in that case was for a portion of the compensation in a land acquisition case; but the issue was between the defendant in this case and Elias and Babappu, the plaintiff's mortgagors, and the question was whether the defendant or Babappu and Elias were entitled to the compensation due in respect of the shares now in dispute. The District Court decided in favour of Babappu and Elias; that is to say, it found that the shares of land belong to them and not to the defendant; and the judgment was affirmed by the Supreme Court.

The learned Judge admits that the law of case No. 351, D. C. Galle, 4,532 (Bonser C. J. and Lawrie J.), would be binding on him if the District Judge in the land acquisition case now put forward had given such a declaration of title in the same terms. The objection has no substance in it. The case turned on the question of title now before us. The District Judge in No. 61, Galle, 2,383 (Mr. Lee), said: "As between the first defendant (Andris Appu) and the fifth defendant (Babappu) the issue is a simple one. It is admitted that in 1879 and 1880 the property was sold in execution of a judgment obtained by fifth defendant and his brother against the first defendant and his brother and their father. In March, 1884, the purchasers obtained the usual order to transfer, but the transfer was not executed till February, 1892. The first defendant's contention is that his father remained in possession notwithstanding the sale. The evidence proves (and specially the evidence of fourth defendant) that the purchasers went into possession and remained in possession up to three or four years ago, when the first defendant's father returned to the village and again endeavoured to obtain

possession. Since then the first defendant (and his co-owner) and the fifth defendant (and his co-purchaser) have been disputing over the right to the land. The fifth defendant's conveyance has relation back to the date of his purchase. He has therefore a good title, and the first defendant has no title, and has failed in proving such possession since the sale as would give him a title by adverse possession. As regards, therefore, the issue between the first defendant and the fifth defendant, I find for the fifth defendant."

The Supreme Court affirmed this judgment. That was a finding of title in favour of the plaintiff in this case as against the defendant in respect of the very question here at issue; and it was a finding without which, and upon which alone, the District Judge could do what the Land Acquisition Ordinance required him to do, namely, apportion the compensation. I am sorry that the parties have been put to the trouble of this appealing on this point.

GRENIER A.J.—

The main question on this appeal was whether the respondent had established a title by prescription to certain shares in the land in question. It would appear that the appellant on September 2, 1902, obtained a mortgage decree against Elias de Silva and Babappu de Silva in case No. 2,640, C. R., Galle, to recover a sum of Rs. 169.68 and costs. The appellant caused the Fiscal to seize the debtor's interests in the land, when the respondent claimed the same. The claim was inquired into by the Court on April 30, 1903, and was allowed. The appellant has now brought this action for a declaration that his judgment-debtors are entitled to the shares in question, and that they are liable to be sold in execution under his writ. The title of Elias de Silva and Babappu de Silva, appellant's mortgagors, was founded upon two Fiscal's conveyances, No. 5,614 dated May 5, 1890, and No. 6,391 dated February 15, 1892. The appellant's mortgagors purchased ½ plus 1/24 plus 1/48 plus 1/102 and 1/112 part of the soil and soil share trees of Kumakanda Adarawatta, Elabodawatta *alias* Welabodawatta, Aswatta, and Pelawatta, all adjoining each other, and containing in extent 2 acres 2 roods 26.4 perches, together with a 5 cubits thatched house and an incomplete house, in execution against the respondent, his father, and his brother. The defendant's case is that, notwithstanding the sale in execution against him, he has been in possession of the land since the date of the sale, and the plaintiff's judgment-debtors never possessed it. It is thus evident that the paper title being with the plaintiff's judgment-debtors, it was for the defendant to show that he has acquired a title by prescription to the shares in question.

It was submitted for the appellant in the Court below, and also in appeal, that not only had the defendant failed to establish title by prescription, but that he was estopped by the judgment and decree of this Court in case No. 61, D. C., Galle, 2,383, dated January 19,

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1894, from asserting any right to the shares in question. A portion of this land was acquired by Government for the railway, and there having been several claimants, amongst them the appellant's judgment-debtors, the defendant, and his mother and brother, the Government Agent deposited the amount of compensation in Court and made a reference under suit No. 2,383. In that suit it was held by the District Judge on January 19, 1894, that the appellant's judgment-debtors were entitled to 1/24 plus 1/48 plus 1/222 parts of the compensation awarded in the case, and that the respondent was not entitled to any share at all, and he was accordingly ordered to pay their costs. On an appeal taken by the respondent, this Court by its judgment dated October 2, 1894, affirmed the judgment of the Court below.

In my opinion the judgment and decree in suit No. 61, D. C., Galle, 2,383, operate as *res judicata*. I am bound to follow the judgment of this Court in No. 351, D. C., Galle, 4,532, where it was held on a state of facts similar to that present in this case that the decree in a land acquisition case, where there were competing claims to the compensation, precluded the parties claiming from again raising the question as to their title to the land acquired. That judgment was by a Bench of two Judges, and was binding on the District Judge, and should have been followed by him. It is true that there was no final decree in case 2,383 declaratory of title; but that, in my opinion, is a mere technical irregularity. I find from the judgment of the District Judge in that case that he declared what the rights of the parties were to the fund in Court after a lengthy inquiry into title. He decided in fact the question of title before declaring the shares to which the parties were entitled.

It was urged by the respondent's counsel that his client had acquired a title by prescription to the rest of the land, although he might have lost all his rights by the judgment in 2,383 to the particular lot that was acquired by the Crown. The fallacy in this argument is manifest. The respondent's claim in case No. 2,383 was based on his alleged right to certain shares in the whole land although the compensation that he asserted he was entitled to was in respect of this particular lot. Such being the case I find that the respondent is clearly estopped from claiming these shares again, unless in the interval he has acquired a title by prescription. If the date of his adverse possession was from January 19, 1894, which was the date of the judgment in the District Court in case No. 2,383, even then it is clear that he has not matured a title by prescription, because the present action was instituted on May 13, 1903, and the respondent has not had time to acquire a title by prescription. The judgment of the Court below must be set aside and judgment entered for plaintiff as claimed with costs.

Appeal allowed: judgment for plaintiff.