1908.
March 24.

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Middleton.

PINHAMY *v.* PIERIS.

D. C., Chilaw, 1,296.

*Curator, sale by—Leave of Court—Insufficient materials—Validity—Private sale—*Bona fide *purchaser—Procedure—Irregularities.*

Where the curator of the estate of certain minors, with the leave of Court, sold certain lands belonging to the minors to the defendant, who purchased them, *bona fide*, for the purpose of paying off a debt incurred by the minors' father, and where the curator duly accounted to the Court for the purchase money, and where subsequently one of the said minors obtained letters of administration to his father's estate, and sued, as such administrator, to recover the said lands, and impeached the sale by the curator on the grounds (1) that the leave of the Court was improperly given, and (2) that the sale was not by public auction,—

Held, that the sale by the curator could not be impeached in these proceedings.

Held, also, that the sale was, in the circumstances, valid, notwithstanding the said irregularities.

The remarks of Lord Justice James in *Gavin v. Hadden* [1] referred to and followed.

ACTION *rei vindicatio.* The facts are fully stated in the judgment of the Chief Justice.

Bawa, for the defendant, appellant.

H. A. Jayewardene (with him *G. E. Chitty*), for the plaintiff, respondent.

Cur. adv. vult.

March 24, 1908. HUTCHINSON C.J.—

The plaintiff sues as the administrator of the estate of the late H. Namburala for a declaration of his title to an undivided half of each of two lands, and to eject the defendant, and for damages. The District Judge gave judgment for the plaintiff as prayed; and this is the defendant's appeal from that judgment.

The shares claimed belonged to Namburala at the time of his death. He died about ten years ago intestate, leaving an estate below Rs. 1,000 in value, and leaving his widow and two minor children, viz., the plaintiff and Wannihamy, as his sole heirs. He had mortgaged the land, and after his death his widow paid off the

[1] *(1871) L. R. 3 P. C. 726.*

mortgage, raising the money for that purpose by granting another mortgage on the land. The uncle of the children then applied to the Court, upon an affidavit setting out the above facts, asking to be appointed curator of the minors for the purpose of selling the land and paying the debt; the Court appointed him curator and guardian, and on September 20, 1899, he duly gave security, and his appointment was formally confirmed. On September 25 he applied to the Court for authority to sell the half share of the land for the purpose of paying the debts of Namburala; and on October 23 an order was issued authorizing him to sell the half share for that purpose.

By deed dated November 8, 1899, the curator joined with the person who was said to be entitled to the other half of the land in selling the entirety of the land. The defendant is the successor in title of the purchaser under that deed.

Namburala's widow did not join in the sale. It does not appear whether she was then dead, or why she did not join. The curator filed his accounts in April, 1900; they were passed by the Court; and on June 13, 1900, his account was declared to be closed.

On March 2, 1904, the plaintiff obtained letters of administration to the estate of Namburala, and on December 16, 1904, he brought this action. The important issue, the one upon which the case now turns, was whether the sale by the curator was valid.

The District Judge held that " the permission to sell given by the Court on September 25, 1899, was improperly given," and he said that he could see nothing in the record of the curatorship proceedings to justify the Judge in making that order. He further said that, admitting the order to have been correct, the sale was irregular, because it should have been by public auction and with a reserve price fixed by the Court, which should have given directions as to the manner of sale, and that it does not appear from the record that these requirements were complied with. He accordingly declared the sale void, and gave judgment for the plaintiff.

The order of September 25, 1899, was one which the Court had jurisdiction to make; it is valid until set aside by competent authority; and the District Court had no power to declare it to have been improper or unjustifiable. It is true that the Court in making it ought to have given directions as to mode of sale; and it might on application to confirm the sale have refused to confirm it, or might perhaps have set it aside on application made in due time and for good cause shown, and upon due notice to the curator and the purchaser. But the sale was made in pursuance of the order and in good faith five years before this action; the purchase money was paid to the curator, and he duly accounted for it, and his accounts were approved and passed by the Court. The order may have been irregular, but it was not *ultra vires*, and the Court which made it afterwards condoned the irregularity by approving of the

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curator's accounts. In my opinion there is no ground for declaring the sale to have been void.

Another issue at the trial was whether the estate of Namburala was over Rs. 1,000 in value. The District Judge expressed no opinion upon it, and I cannot see how it is material in this case.

The judgment of the District Court should be set aside, and the action dismissed with costs in both Courts.

MIDDLETON J.—

I agree. It seems to me that Lord Justice James's ruling in the case of *Gavin v. Hadden* [1] which was a case decided on appeal from the Supreme Court of Ceylon by the Privy Council, is very much in point here. There it was said " it is not the province of a fresh suit to show irregularity or error of fact or of law in another suit, otherwise there would be no end of litigation, and the humblest Court in the kingdom might be called on to set aside the decision of the highest.

" Irregularity, error of fact or of law, must be shown in the suit itself, must be rectified by application to the original Court, or by way of appeal from or review of the judgment. It makes no difference that the fresh suit is not by the original defendant. It would cause most incalculable mischief if it were once supposed that an action and judgment against an executor or other legal representative as such is not as binding against the testator's estate as any action or judgment against any defendant is binding against him.

" The only ground on which it is competent for any other executor or any person interested in the estate to question in a new suit the proceedings in a former action which has resulted in a judgment against the property of the testator, is fraud."

Appeal allowed.

[1] *(1871) L. R. 3, P. C. 726, and, 8 Moore P. C. (N. S.) 90.*