Present : Branch C.J. and Schneider J.

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HORNE *v.* MARIKAR *et al.*

81—D. C. Kandy, 31,387.

Registration—Letters of administration—Sale by administratrix for purposes of administration—Execution sale against heir—Adverse claim—Ordinance No. 14 of 1891, s. 16.

A grant of letters of administration is a registerable instrument within the meaning of section 16 of the Land Registration Ordinance.

A claim based upon a grant of letters of administration which has not been registered is void as against an adverse interest created by a subsequent deed duly registered.

Fonseka v. Cornelis [1] followed.

ACTION for declaration of title to a property called Ambatalawa estate. The property was purchased by the administratrix of the estate of one Miskin an execution of a decree on a mortgage bond entered in favour of Miskin. After the institution of the action Miskin died and the widow, Rahamath Umma, as administratrix was substituted as plaintiff in the mortgage action. The plaintiff as administratrix purchased the property in execution, and the Fiscal's transfer in her favour was executed on November 24, 1922, and registered on November 29, 1922. In the testamentary action in which she was administering her husband's estate, Rahamath Umma obtained the sanction of the District Judge on August 23, 1922, and March 11, 1923, to sell the estate for the payment of costs of the administration. The land was, thereupon sold by her to the 2nd defendant on April 3, 1923. The plaintiff stated that he had obtained a decree against Rahamath Umma in her personal capacity, and in execution of that decree had caused the Fiscal to seize and sell her right, title, and interest in the estate in question on May 27, 1921, and that he had obtained a Fiscal's transfer on November 22, 1922, which was registered on January 27, 1923. It was admitted that neither the letters of administration nor the two orders of Court sanctioning the sale of the estate by the administratrix were registered. The District Judge dismissed the plaintiff's action.

H. V. Perera, for plaintiff, appellant.

Keuneman, for defendants, respondents.

[1] *(1917) 20 N. L. R. 97.*

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September 17, 1925. BRANCH C.J.—

It is unnecessary to recapitulate the facts of this case which are fully set out in the judgment of my brother Schneider which I have had the advantage of reading.

The conclusion arrived at in that judgment follows the view I held at the close of the argument, and consideration has not altered that view. I concur and I agree with the order proposed.

SCHNEIDER J.—

This action has been tried and decided in the District Court upon a statement of facts in writing agreed upon by both parties. The learned District Judge dismissed the plaintiff's action and he has appealed. For the purpose of the appeal I take the following facts from the statement mentioned and from the other documents which have been put in evidence. One Miskin sued two persons as defendants to recover judgment upon a mortgage bond in his favour. During the pendency of the action he died intestate leaving a wife Rahamath Umma and two sons as his heirs. Rahamath Umma, his widow, was appointed administratrix of his estate on August 24, 1917, in testamentary action, D. C., Kandy, No. 3,329. She was substituted plaintiff in place of her deceased husband in the action upon the mortgage bond. In execution of the decree entered in that action the property mortgaged—Ambatalawa estate—was sold on September 11, 1920, and was purchased by one Saravanamuttu "for and on behalf of the subtituted plaintiff, Rahamath Umma, widow of A. D. Miskin, deceased." She paid for the purchase by being given credit for a sum of Rs. 10,135 upon an order of Court directed to the Fiscal to give credit for that sum to the substituted plaintiff. There was a balance sum of Rs. 165 due to the Fiscal in connection with the purchase which she appears to have paid in cash. Presumably this money also belonged to the estate of her deceased husband or was a loan by her to that estate. In the order of the Court requiring the Fiscal to give credit, the substituted plaintiff is described as "*Rahamath Umma, administratrix of the estate of the deceased plaintiff, A. D. Miskin.*" The sale of the land was confirmed by the District Judge on November 14, 1922. In the order confirming the sale, Rahamath Umma is described as the "administratrix of the deceased plaintiff, A. D. Miskin." The Fiscal executed a transfer of the land on November 24, 1922. This transfer was registered on November 29, 1922. In the recitals in this transfer the Fiscal set out the relevant facts which I have already mentioned regarding the sale in execution, the purchase, and the manner of payment of the price, but he conveyed the sale

to " Rahamath Umma, widow of A. D. Miskin, deceased." This transfer, it would appear, was not regarded by the District Court as being in accordance with the order of the confirmation of the sale. This is evidenced by the deed of rectification dated December 10, 1923, issued by the same Fiscal. In this deed it is recited that the Secretary of the District Court had called upon the Fiscal to rectify the error in his transfer to Rahamath Umma by inserting the designation of the purchaser as " the substitued plaintiff, Rahamath Umma, administratrix of the estate of the deceased plaintiff, Ad uru Darwasse Miskin." The deed then proceeds to rectify the transfer in accordance with the direction of the District Court. In the testamentary action No. 3,329, in which she was administering her husband's estate, Rahamath Umma obtained the sanction of the District Judge on August 23, 1922, and on March 11, 1923, to sell Ambatalawa estate for the payment of the costs of the administration of her husband's estate. The land was sold to the 2nd defendant and conveyed to him by her on April 3, 1923. The purchase money is still lying in deposit in the testamentary action pending the decision of this action which was instituted in December, 1923.

In this action the plaintiff prayed to have it declared that he was entitled to all the interest of Rahamath Umma in Ambatalawa estate. He also prayed for an order on the defendants to pay him his share of the profits, if any, of that estate from November 15, 1923. He did not specify what share it was that he claimed. He stated that he had obtained a decree against Rahamath Umma in her personal capacity, and in execution of that decree had caused the Fiscal to seize and sell her right, title, and interest in the estate in question on May 27, 1921, and that he obtained a transfer of the estate from the Fiscal on November 22, 1922, which he duly registered on January 27, 1923.

It was admitted that neither the letters nor the two orders of the Court sanctioning the sale of the estate by the administratrix were registered, and that plaintiff was not noticed of the application by the administratrix for sanction to sell the estate. The learned District Judge dismissed the plaintiff's action holding that in the events which had happened the 2nd defendant was entitled to the estate in question.

On appeal it was contended by Mr. Perera, on behalf of the plaintiff, that the Fiscal's transfer of the estate to Rahamath Umma was in her personal capacity, and that the plaintiff was, therefore, entitled to the whole of the estate. This contention is not entirely consistent with the plaintiff's claim as laid in the plaint. It would not probably have been made if Counsel had noticed that his Proctor in the District Court cleared whatever ambiguity there was in the

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plaint by stating that he "claimed only the share of Rahamath Umma as an heiress of Miskin." This statement must be regarded as an admission that the purchase of the estate by Rahamath Umma enured to the benefit of her husband's estate. That being so it makes no difference in what light the Fiscal's transfer in her favour is to be viewed. But had it been necessary to consider the question of the effect of that Fiscal's transfer, I should have had no hesitation in holding that it was conveyed to her in her capacity as administratrix, and this for several reasons. One of them is that the Fiscal is a ministerial officer of the Court deriving his authority to sell or transfer property from the Court. As at present minded I would hold that he can transfer property which he has sold only in strict accordance with the orders of the Court. In this instance he had obviously made an error in his transfer and the Court had the power to direct a rectification of that error. The combined effect of his transfer and of its rectification was to vest the title to the estate in Rahamath Umma in her capacity solely as administratrix, beyond any doubt whatever.

Mr. Perera's next contention has to be carefully considered. He submitted that the decision in *Fonseka v. Cornelis* (*supra*) governed this case. The same argument appears to have been addressed to the District Judge. But the Judge thought that the circumstances of this case were different. He thought that the estate in question at no time formed part of the estate of the deceased Miskin and, therefore, never vested in his heirs. He thought that Rahamath Umma as one of the heirs had a "personal saleable interest" and that this interest was vested in the plaintiff. He thought that if any portion of the "land" remained available after the deceased's estate had been duly administered the heirs were entitled to demand from the administratrix that such remaining portion should be conveyed to them in the proportions laid down by the Muhammadan Code.

I am unable to agree with the District Judge that the land never at any time vested in the estate of the deceased Miskin. Miskin had obtained the decree in the action on the bond in his lifetime. The land was bought with the proceeds which were realizable upon that decree. The land therefore formed part of his estate undoubtedly from the date of its purchase. It might be regarded as having formed part of that estate even earlier if it be correct to deem that upon its purchase it took, among the assets of the estate the place of the money of the estate which was expended upon its purchase. But it is sufficient if it formed part of the estate from the date of its purchase for the heirs of the estate to be vested with title from that date. It is settled law that title to immovable property belonging to the estate of a person dying intestate does not vest in the administrator but passes to his heirs, but that the administrator

retains the power to sell the property for the purposes of administration. See *Gopálsamy v. Ramasamy Pulle* [1] and *Silva v. Silva* (Full Bench).[2]

Rahamath Umma accordingly became vested with title to a share of the land as one of the heirs *ab intestato*. When the plaintiff caused her interest to be seized and sold by the Fiscal, after the purchase of the land by her as administratrix, and obtained a transfer of that interest from the Fiscal he became vested with that interest. He could be deprived of it only by a sale of the land for the purposes of administration. As a matter of fact the land was sold for those purposes, and the 2nd defendant in the circumstances would have a title superior to the plaintiff even as regards the share of Rahamath Umma.

The question which arises upon these facts is whether the registration of the transfer in favour of the plaintiff while the letters of administration were never registered enables the plaintiff to defeat the 2nd defendant's claim which is adverse to his claim. It is this very question which came up for decision before the Bench of three Judges which according to the report was a "Full Bench" of this Court in *Fonseka v. Cornelis* (*supra*). The only difference is that in that case the "instrument" which had not been registered was a probate of a will, whereas in this case the instrument is a grant of administration. But this difference does not matter. A grant of administration is expressly mentioned in section 16 of the Ordinance alongside with a probate of a will among "instruments" which are registerable. The question for decision in this case would, therefore, appear to be identical with the question decided in *Fonseka v. Cornelis* (*supra*). It was held in that case that the probate of a will was an "instrument" registerable under the provisions of the Ordinance by virtue of the provisions in sections 16 and 17, and that by virtue of section 17, a duly registered deed affecting land belonging to a deceased person's estate gets priority over any claim based on an unregistered probate. The section declares that the grant of administration in this case upon which the 2nd defendant bases his title to the whole land "shall be deemed void as against" the plaintiff who claims upon a duly registered grant a share adversely to the grant which has not been registered.

I would, therefore, set aside the decree of the District Judge dismissing the plaintiff's action and hold that he is entitled to the share to which Rahamath Umma would have succeeded by intestate succession. That share appears to me to be an undivided one-eighth, but I would leave the District Judge free to determine what is that share when the case comes again before him for final adjudication. The plaintiff will be declared entitled to the share

[1] *(1911) 14 N. L. R. 238.*

[2] *(1907) 10 N. L. R. 234.*

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in the land to which Rahamath Umma would have taken as an heir of her husband, and the case will go back to the District Court for the determination of the other matters in dispute between the parties. The plaintiff will have his costs against the defendants, both of the trial which has already taken place and of this appeal.

Appeal allowed.