

1947

Present : Howard C.J.

APPUHAMY *et al.*, Appellants, and THAILAMMAL, Respondent

244—C. R. Kandy, 23,749

Sale—Purchase of property by decree holder at execution sale—Subsequent transfer by purchaser to a bona fide purchaser—Validity of the bona fide purchaser's title if the decree is subsequently set aside.

The title of a person who *bona fide* purchased property from a decree holder who had bought it at the sale held in execution of his decree is not affected if the decree, by reason of its being voidable, is subsequently set aside by Court.

Wijeyeratne v. Mendis Appu et al. (1946) 47 N. L. R. 393, followed.

A PPEAL, with application for leave to appeal, from a judgment of the Court of Requests, Kandy.

Cyril E. S. Perera (with him *L. G. Weeramantry*), for the appellants.

N. E. Weerasooria, K.C. (with him *S. R. Wijayatilake*), for the petitioner, respondent.

Cur. adv. vult.

March 4, 1947. HOWARD C.J.—

This is an appeal by the 3rd and 4th respondents from the judgment of the Court of Requests, Kandy, setting aside a decree of the same Court dated May 11, 1938, on the ground that the defendant in that case was of unsound mind and also setting aside subsequent orders made in the case and declaring the sales made thereunder were null and void. The plaintiff in the original case has since died leaving as heirs his mother, the 1st respondent, and his brother, the 2nd respondent. The defendant in the original case has also died leaving as heirs the petitioner who is the respondent to this appeal and another daughter. The plaintiff obtained

decree on May 11, 1938. In pursuance of this decree the defendant's properties were sold on August 2, 1938, and October 22, 1938, and purchased by the plaintiff. The latter subsequently sold the properties to Muttu Kannu Ammal and Sundaram Pillai by deed No. 688 dated February 13, 1942. These two purchasers by deed No. 762 of May 5, 1945, sold the same properties to the appellants for the sum of Rs. 6,000. The respondent to this appeal applied for the decree and subsequent sales and orders to be set aside on the ground that the defendant, her father, was adjudged a lunatic on September 1, 1938. In setting aside the decree, sales and orders the Commissioner has held that the defendant was adjudicated a lunatic on September 1, 1938, and was of unsound mind even when the decree was entered on May 11, 1938. It would appear also that the appellants when they purchased the properties in 1945 were aware of the fact that the defendant had been of unsound mind for about two months prior to the adjudging him a lunatic.

There is no suggestion that the appellants had in purchasing the properties been a party to any fraud either in connection with the decree, order for sale or their subsequent purchase. In these circumstances they were *bona fide* purchasers for value. The case is in my opinion governed by the judgment of Wijeyewardene J. in *Wijeyeratene v. Mendis Appu*¹ where it was held that the title of a *bona fide* purchaser from a decree holder who purchased at a sale held in execution of his decree is not affected by the subsequent reversal of such decree. In his judgment Wijeyewardene J. referred to the judgment of the High Court of Madras in *Sheik Ismail Rowther et al. v. Rajah Rowther*² and cited with approval the following passage from that judgment:—

“Assuming that the first defendant in obtaining the decree had been guilty of misrepresentation or fraud, the proceedings were only voidable, and a *bona fide* purchaser from him is entitled to rely on his title as such. The plaintiff had only an equity to set aside the proceedings which were the result of fraud or misrepresentation and that equity cannot be allowed to prevail against persons in the position of the appellants.

It is by no means clear that it was the duty of the appellants when aware that their vendor's title was under a Court sale, to refer to the decree on which the sale was held; but, assuming that it was, we are unable to agree to the argument urged for the plaintiff that a reference to the decree as it stood, before it was set aside, would have shown any flaw in the title of the first defendant so as to fix the appellants with notice of the first defendant's fraud.

The decision of the Madras Court was, as pointed out by Wijeyewardene J., consistent with the judgment of the Privy Council in *Zain-ul-Abdin Khan v. Asghar Ali Khan*³. The respondents are in a stronger position in this case as they are not merely purchasers at an execution decree but from a person who bought from the purchaser at an

¹ (1946) 47 N. L. R. 393; 32 C. L. W. 105.

² (1906) 30 Indian Law Reports (Madras) 295.

³ (1888) 10 Allahabad 166.

execution decree. The judgment of the Commissioner for the reasons I have given must be set aside so far as the appellants are concerned and they are declared entitled to the lands described in the schedule to the respondent's petition together with their costs in this Court and the Court below.

Appeal allowed.

