Present : Lascelles, A.C.J. *Mar. 16, 1911*

KUDA BANDA *v.* DINGIRI AMMA.

60—*C. R. Kandy*, 18,602.

Action under s. 247 of the Civil Procedure Code—Writ-holder not bound by judgment against debtor in action between debtor and claimant.

In an action under section 247 of the Civil Procedure Code, between an unsuccessful claimant and the writ-holder, the latter is not concluded by a judgment adverse to the judgment-debtor in a litigation between him (debtor) and the claimant.

THE facts in this case are set out in the order of the learned Commissioner of Requests (R. G. Saunders, Esq.) :—

The facts in this case are as follows. In C. R. Kandy, 17,587, one H. Dingiri Amma (the defendant in the case C. R. Kandy, 18,602) instituted an action on a promissory note against Panikki Mudianselage Punchi Banda, and obtained judgment on November 18, 1908, in execution of which decree an undivided half share of the southern two pelas of the land Galalelakumbura was seized. On May 12, 1909, the Fiscal of the Central Province forwarded to Court a claim to the said land put in by one Nawaratna Mudianselage Kuda Banda (the plaintiff in this case, 18,602), which claim was inquired into on June 24, 1909, and dismissed ; whereupon the said Nawaratna Mudianselage Kuda Banda instituted this action under section 247 of the Civil Procedure Code, asking the Court to declare him entitled to the portion seized under writ in C. R. 17,587. It is argued on behalf of the plaintiff that he was one of the four plaintiffs in D. C. Kandy, 10,931, in which Panikki Mudianselage Punchi Banda, the judgment-debtor in C. R. 17,587, was the second defendant. The said Punchi Banda was at the time of the institution of the District Court case a minor, but it was argued he was duly represented by a guardian *ad litem*, Girakurege Udage Ram Menika, and it is further argued that in D. C. 10,931 judgment was entered in favour of the plaintiffs (of which the plaintiff in this case was one) as against the defendants, including Punchi Banda, for certain lands, including the portion seized in C. R. 17,587, the subject-matter of this case. It is therefore argued on behalf of plaintiff that the decree in D. C. 10,931 is *res judicata*, and estops the defendant from setting up an antagonistic title in the said Punchi Banda.

The Commissioner then proceeded to discuss other points, and continued :—

This brings us to the question whether the decree in D. C. 10,931 did, or did not, entitle the plaintiffs to the entirety of the lands. A perusal of the record shows that on March 26, 1898, the District Judge, after recording evidence and giving reasons for his judgment, gave the following judgment: " I give plaintiffs judgment for the lands claimed,

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with Rs. 2·50 nominal damages, and costs against the first and second defendants." Now, the second defendant is the said Panikki Mudianselage Punchi Banda, and it is therefore clear that by the judgment in D. C. 10,931 he was declared not entitled to any share of the lands—a judgment which I hold is *res judicata*, and estops the defendant in this case from setting up an antagonistic title in the said Punchi Banda.

I accordingly give judgment in favour of plaintiff, and direct that the land seized in C. R. 17,587 be released from seizure.

H. A. Jayewardene, for the defendant, appellant.—A decree against the judgment-debtor in a suit between him and the claimant does not estop the defendant in the present action under section 247 of the Civil Procedure Code from establishing the judgment-debtor's title. The judgment-debtor is not a privy to the judgment-creditor. The judgment-creditor does not represent the debtor, even though he has to rely on the debtor's title. Counsel cited *Hukum Chand*, *p.* 201, *s.* 93.

Bartholomeusz, for the plaintiff, respondent.—The judgment-creditor cannot in this suit be allowed to prove that the judgment in the action between the claimant and the debtor was wrong. It is not the province of this suit to point out irregularities in the former suit. Counsel cited *Pinhamy v. Peries*,[1] *Abeyaratna v. Suppramaniam Chetty*.[2]

Jayewardene, in reply.

Cur. adv. vult.

March 16, 1911. LASCELLES A.C.J.—

The only question raised by this appeal is whether, in an action under section 247 of the Civil Procedure Code, between an unsuccessful claimant and the writ-holder, the defendant is concluded by an adverse judgment in a litigation between the claimant and the execution-debtor. It is true that an execution-creditor has generally to rely upon his debtor's title, but, apart from authority, I should have no difficulty in holding that the execution-creditor does not represent his debtor so as to constitute the latter a party to the suit.

But the question is fully covered by authority. In *Richards v. Johnston*[3] the Exchequer Chamber held that a Sheriff who comes to seize the goods of a debtor armed with a writ of execution in favour of a creditor is not bound by estoppels, which might have prevented the debtor himself from claiming the goods. In *Richards v. Jenkins*[4], Lord Justice Fry, in a similar case said : "In my opinion the execution-creditor is not a party or a privy to the estoppel, and is not bound by it."

[1] *(1908) 11 N. L. R. 102 (at p. 103).*
[2] *(1905) 2 Bal. 33 ; 9 N. L. R. 371.*
[3] *4 H. & N. 660.*
[4] *L. R. 18 Q. B. D. 451.*

The Indian authorities collected in *Hukum Chand* on *res judicata* are to the same effect, and are based on the same principles.

The judgment of the Commissioner of Requests must be set aside and the case remitted to him for re-trial on the footing that the writ-holder is not barred by the previous litigation.

The appellant is entitled to the costs of the appeal.