1937

Present : **Soertsz and Hearne JJ.**

THANGAMMA *v.* NAGALINGAM

26—D. C. (Inty.), Jaffna, 10,289

Mortgage action—Intervention of judgment-creditor of mortgagor, who had seized the property—Not necessary party—No right to intervene—Civil Procedure Code, s. 18—Mortgage Ordinance, No. 21 of 1927, s. 6 (1).

Where in a mortgage action a person who had effected a seizure of the mortgaged property on a writ which he had obtained against the defendant, applied to intervene on the ground that the action was a collusive one brought to frustrate his seizure,—

Held, that the petitioner was not entitled to intervene as he was not a necessary party for the adjudication of the questions involved in the action between the plaintiff and the defendant.

Held further, that he was not a necessary party within the meaning of section 6 (1) of the Mortgage Ordinance.

Kalu Ménika v. Kiri Banda (2 C. L. Rec. 191) and *Ibrahim v. Hong Kong and Shanghai Bank (37 N. L. R. 51) followed.*

APPEAL from an order of the District Judge of Jaffna.

N. Nadarajah (with him *S. Mahadeva*), for plaintiff, appellant.

S. Nadesan, for petitioner, respondent.

Cur. adv. vult.

June 22, 1937. SOERTSZ J.—

This was an action on a mortgage bond. The plaintiff sued the defendant to recover a sum of Rs. 1,500 with interest and prayed that, in default of payment, decree be entered for the sale of the mortgaged premises. Before summons could have been served on the defendant, the petitioner-respondent filed petition and affidavit and prayed that "he be allowed to intervene in this case and file answer". He alleged that this action was a collusive one between the plaintiff and the defendant for the purpose of frustrating a seizure he had effected in respect of this land on a writ he had obtained against the defendant.

The inquiry into this application took place on November 11, 1936. By that date, the defendant had been served with the summons but had not appeared to defend the action. The District Judge made order on November 23, 1936, directing that the petitioner be added a party. He purported to act under section 18 of the Civil Procedure Code. Now as pointed out in the case of *Perera v. Lowe* [1] in which the facts are exactly the same as the facts in this case except that the action was based on a promissory note and not a mortgage bond, a person in the position of the petitioner in the present case cannot intervene as he is not a necessary party for the effectual and complete adjudication of the questions involved in the case. He has nothing to do with the questions involved in the action between the plaintiff and the defendant. It is not necessary to pursue this question any further. Respondent's counsel frankly admitted he could not support the trial Judge's order under section 18 of

[1] *(1920) 2 C. L. Rec. 191.*

the code, but he maintained that the petitioner was rightly made a party because he was a necessary party in terms of section 6 (1) of the Mortgage Ordinance, No. 21 of 1927.

The petitioner, he argued, had an interest in the land to "which the mortgage in suit had priority". But this point too is covered by authority. In *Ibrahim v. Hong Kong and Shanghai Bank* [1], Garvin and Akbar JJ. held after careful consideration that a seizure does not create an interest in the land seized within the meaning of section 6 (1) of the Ordinance No. 21 of 1927. The same view appears to have been taken by Dalton J. in *Chettiar v. Coonghe* [2]. I would follow these rulings and hold that the petitioner's application cannot be supported under section 6 (1) of the Mortgage Ordinance.

It therefore fails and the appeal must be allowed with costs of appeal and of the inquiry to be paid to the appellant by the petitioner-respondent.

HEARNE J.—I agree.

Appeal allowed.

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[1] *14 C. L. Rec. 81; (1934) 37 N. L. R. 51.*
[2] *13 C. L. Rec. 33; (1933) 35 N. L. R. 89 at 91.*