

Present: Wood Renton J.

PINGYAR v. VALLASAMY.

440—C. R. Colombo, 28,459.

Action under s. 247, Civil Procedure Code, in respect of a cow—No voucher produced by plaintiff—Proof of possession by plaintiff at date of seizure—Burden of proving that plaintiff was not owner lies on the defendant.

In an action by an unsuccessful claimant under section 247, Civil Procedure Code, for a declaration of title to a cow, and for a declaration that the cow was not liable to be seized and sold under defendant's writ, the plaintiff proved that he was in possession of the cow at the date of the seizure, but he produced no voucher to prove his purchase.

Held, that the plaintiff was entitled to succeed, as the defendant had not proved that the judgment-debtor had a superior title.

THE facts appear from the judgment.

De Jong, for the defendant, appellant.—The plaintiff asks for a declaration of title to a cow and calf. He has no voucher for the cow. He cannot therefore maintain this action. *Don Davit v. Podi Sinno*,¹ *Ramaiya v. Sinno*.² Plaintiff cannot succeed by merely showing that defendant is not the owner, and that someone else has a voucher in his name for the cow. To enable plaintiff to succeed in this action plaintiff must have himself had title at the date of seizure. *Silva v. Kirigoris*,³ *Silva v. Nonahamine*.⁴

H. A. Jayewardene (with him *Kandiah*), for the respondent.—If the Court finds, as it has found in this case, that the plaintiff was in possession of the cow, the burden of proof that he is not the owner is shifted on to defendant. See *Abayaratna v. Suppramaniam Chetty*.⁵

De Jong, in reply.—The case cited does not apply to the facts of this case. That was a land case; and in the case of land possession is a very important element. But in this case the absence of a voucher is fatal to the plaintiff's case.

Cru. adv. vult.

January 27, 1913. WOOD RENTON J.—

There is no appeal in this case on the facts. It involves, however, the following point of law. The defendant-appellant, as judgment-creditor in C. R. Colombo, No. 26,969, issued a writ against the

¹ (1906) 3 Bal. 39.

² (1907) 3 Bal. 162.

³ (1909) 7 N. L. R. 195.

⁴ (1906) 10 N. L. R. 44.

⁵ (1905) 2 Bal. 33.

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judgment-debtors in that case, and seized in execution of his writ two Bombay milch cows and two calves. The plaintiff-respondent claimed the cows and calves. The claim has been disallowed in respect of one cow and one calf, and the respondent brings this action under section 247 of the Civil Procedure Code, claiming a declaration that they are his property, and that they are not liable to be seized and sold under the appellant's writ. The learned Commissioner of Requests, Mr. Balasingham, holds that at the date of the seizure the cow and calf in question were in the possession of a caretaker for the respondent, and, although the respondent has produced no voucher as proof of title, has given judgment in his favour on the ground that he was in possession at the date of the seizure, and that in that state of facts the burden of disproving his title rested upon, and had not been discharged by the appellant. The appellant contends that this decision is contrary to the rulings of the Supreme Court in *Don Davit v. Podi Sinno*¹ and *Ramaiya v. Sinno*.² I do not think so. In both the cases just referred to the plaintiff was seeking to set up title against a person in possession of the cattle, and it was held that he could not do this unless he was in a position to prove his title by the production of a voucher, as required by the rules made under section 5 (1) of Ordinance No. 10 of 1898. There is nothing in *Don Davit v. Podi Sinno*¹ or in *Ramaiya v. Sinno*² to prevent a presumption arising from the fact of possession in favour of a claimant of cattle seized in execution, and the case of *Abayaratna v. Suppramaniam Chetty*³ is an authority in favour of the respondent on this point. The circumstance that the property seized in that case was immovable property is, in my opinion, immaterial. I agree, further, with the Commissioner of Requests, that the respondent is entitled to succeed by reason of the fact that he has proved that the cattle in question were in his possession and not in that of the judgment-debtors at the date of seizure.

The appeal is dismissed with costs.

Appeal dismissed.

(1906) 3 Bal. 39.

³ (1905) 2 Bal. 33.

² (1907) 3 Bal. 162.