Present : De Sampayo J. and Garvin A.J. 1921.

KATIRITAMBY *et al.* *v.* PARUPATHIPILLAI *et al.*

145—D. C. Jaffna, 13,621.

Erroneous decision on a pure question of law—Res judicata.

An erroneous decision on a pure question of law will operate as *res adjudicata quoad*, the subject-matter of the suit in which it is given, and no further.

P gifted to the second and third defendants certain lands, reserving life interest. In D. C. No. 3,447 these lands were seized in execution, and claimed by the second and third defendants. The District Judge ordered the Fiscal to sell the interests of P. At the sale in execution, S (through whom plaintiffs claim) became the purchaser. In C. R. No. 12,239 S sued second and third defendants to vindicate title to one of the lands seized under writ in No. 3,447. The Commissioner held (wrongly on the question of law raised) that the order in the claim inquiry was one dismissing the claim, and as the second and third defendants had not brought an action under section 247, they had no title to the land. Subsequently, at an execution sale, the interests of the second and third defendants to the other lands bought by S were purchased by the fourth defendant. In this action plaintiffs sued to vindicate title to these other lands, and they pleaded the decree in No. 12,239 in bar of defendants' title.

Held, that the decree in No. 12,239 did not operate as *res judicata* on the question of law involved.

THE facts appear from the judgment.

Balasingham (with him *Croos-Dabrera*), for appellants.

A. St. V. Jayawardene, K.C. (with him *Joseph*), for respondents.

Cur. adv. vult.

December 19, 1921. GARVIN A.J.—

The plaintiffs are seeking a declaration of title to the three allotments of land fully described in the plaint. These lands and certain others originally belonged to one Parupathy, wife of Arumogam. This lady, by deed No. 3,225 of October 23, 1901, gifted these lands to the second and third defendants, subject to the

1921.

GARVIN A.J.

Katiritamby v. Parupathipillai

reservation of a life interest. Under a writ of execution issued in case No. 3,447 of the District Court of Jaffna, these lands and others, including a land called Kalani, all of which formed the subject of the gift above referred to, were seized, and upon seizure claimed by the second and third defendants. At the inquiry into these claims the only evidence recorded was that of the second defendant, who claimed the lands under this deed of gift, but stated that a life interest was reserved by the judgment-debtor. No further evidence was adduced. The District Judge made the following order: "Instruct the Fiscal to sell the interests of the defendants in the lands seized. No costs."

A month later an objection appears to have been lodged with the Fiscal by the claimants to the sale in execution, on the ground that the defendants' interests were not clearly defined. This objection was apparently referred to Court, whereupon the District Judge minuted as follows: "I decline to make any further order in the matter. I cannot make the order clearer. Interest includes life interest or any other kind of interest. I mean defendants' interest, whatever it is."

At the sales in execution which followed one K. H. Sinnatamby became the purchaser, and through him the present plaintiffs claim. Many years later, at a sale in execution against the second and third defendants, their interests were purchased by the fourth defendant, who now claims that the title to these lands is in him, subject to Parupathy's life interest, which admittedly passed to the plaintiffs or rather their predecessor Sinnatamby.

Primâ facie, this contention is sound. But the plaintiffs contend that the judgment in case No. 12,239 of the Court of Requests of Point Pedro is *res adjudicata*, and is in bar of the title of the fourth defendant. Now, that was an action by Sinnatamby against the second and third defendants to vindicate his title to another of the lands seized under the writ in case No. 3,447. It was contended on behalf of Sinnatamby that the order in the claim proceedings, to which I have referred, was in effect an order disallowing the claim of the second and third defendants, and was binding and conclusive as to the title to the land in claim, inasmuch as no action was brought within fourteen days as provided by section 247 of the Civil Procedure Code. This contention was upheld, and Sinnatamby was declared entitled to the land, which formed the subject-matter of that action.

With all respect to the Judges who were responsible for that decision, I am unable to see how that order can be said to amount to a disallowance of the claim. Earlier in this judgment I have set out exactly what occurred in the course of those claim proceedings. The District Judge did not disallow the claim, nor did he direct the sale of the property under seizure. Admittedly, the judgment-debtor had some interest in the property under seizure.

The District Judge did not think it necessary to determine exactly what those interests amounted to. Instead he directed the Fiscal to sell, not the property under seizure, but the "interests of the defendant" in that property.

The order made at the claim inquiry in the terms in which it was made is, undoubtedly, binding on the parties to those proceedings. So also the ruling in C. R. case No. 12,239, whether it is right or, as I think, wrong, is binding on the parties and their privies *quoad* the subject-matter of that action.

Now, this is a different action, the subject-matter is different, the cause of action is different, and as to parties, it is a question whether the fourth defendant, who purchased these lands in execution against the second and third defendants, is in law privy to them.

The order in the claim inquiry is pleaded in bar of fourth defendant's title. That defendant replies that that order is no bar, in that it allowed this claim, or, at all events, did not disallow it. The plaintiffs' answer whether the order amounts to an order of disallowance or not, it was held to be such in case No. 12,239 of the Court of Requests of Point Pedro, and the matter is therefore *res adjudicata*, and cannot be challenged, even in regard to a different land upon a different cause of action. In a word, it is contended that a ruling on a pure question of law is binding for all times on the parties to the case in which the ruling is given, and may not be questioned even in a separate and distinct action in which the subject-matter is also different.

For this proposition no authority was cited. For the exact contrary we have been referred to *Caspersz on Estoppel, sections 536 to 539.* In a chapter in which he treats of the effect of erroneous decisions, Caspersz says: "A decision which is erroneous cannot have the force of *res adjudicata* in a subsequent proceeding for a different relief. Or when the cause of action is different, but the matter has already been in controversy, then the estoppel ought to be limited to matters distinctly put in issue and determined previously, and should further be restricted to questions of fact or of mixed law and fact . . . . section 537 . . . . But as regards the law, an erroneous decision does not prevent the Court from deciding the same question arising between the same parties in a subsequent suit according to law."

These passages, so far as they apply to the matter immediately before us, are an authority for the proposition that an erroneous decision on a pure question of law will operate as *res adjudicata quoad* the subject-matter of the suit in which it is given, and no further.

The following cases cited by Caspersz have been examined by us:—*Porthasardi v. Chinna Krishna,*[1] *Chaman Lal v. Baputhai,*[2] and *Gopu Kolandavelu v. Sami Royar.*[3]

[1] *(1882) 5 Mad. 304.* [2] *(1897) 22 Bom. 669.*
[3] *(1905) 33 Mad. 102.*

1921.

GARVIN A.J.

Katiritamby v. Parupathipillai

Without exception, they all affirm the proposition that a decision on a pure question of law does not prevent a Court from deciding the same question afterwards between the same parties according to law.

In view of this conclusion, it is unnecessary to consider the further contention that a purchaser at an execution sale is privy to the judgment-debtor. The rulings of this Court, in the cases of *Kuda Banda v. Dingiri Amma*[1] and *Banda v. Pattison*,[2] indicate that such a purchaser is not privy to the judgment-debtor. It is submitted that these decisions should be reconsidered. There is no reason to do so in this appeal, which fails for the reasons I have already given.

The judgment of the District Court is affirmed, and the appeal dismissed, with costs.

DE SAMPAYO J.—I agree.

Appeal dismissed.