1925.

*Present :* Jayewardene A.J. and Akbar A.J.

MUTTIAH CHETTY *v.* UKKURALA KORALA.

*159—D. C. Kegalla, 6,903.*

*Administration—Sale by heirs—Payment of debts—Claim by creditor.*

Sale of property by the heirs of an intestate estate is valid if the purchase money has been expended for purposes of administration. But where part only of the consideration has been so utilized, the property transferred may be sold in execution, at the instance of a creditor, for the realization of the balance.

*Gopalsamy v. Ramasamypulle*[1] followed.

APPEAL from an order by the District Judge of Kegalla. The plaintiff asked for a declaration that a leasehold interest which the defendant had purchased from the heirs of one Dingiri Banda be declared liable to be sold in execution of a decree he had

[1] *(1911) 14 N. L. R. 238.*

obtained against the administrator of Dingiri Banda's estate. The defendant pleaded that when the said interest was seized under a writ issued at the instance of another creditor of Dingiri Banda he had paid a sum of Rs. 400 and had it released from seizure, and that if the said interest was liable to be seized and sold he claimed to be entitled to be paid the sum of Rs. 400. The learned District Judge held that it was open to the plaintiff to sell the leasehold only on payment of the said sum to the defendant. The plaintiff appealed.

*Keuneman*, for plaintiff, appellant.

*Zoysa* (with him *Ranawake*), for added defendant, respondent.

November 30, 1925. JAYEWARDENE A.J.—

This appeal raises a question with regard to the effect of a sale by the heirs of an intestate estate as against the administrator or the execution creditors of the estate. It was argued before us as a case of the first impression, but there are decisions which, if they do not cover it, provide a principle for its solution.

The plaintiff asks for a declaration that a leasehold interest which the defendant has purchased from the heirs of Dingiri Banda is liable to be sold in execution of a decree he has obtained against the administrator of Dingiri Banda's estate. The defendant denies that the leasehold interest is liable to be sold under the plaintiff's decree, as, when the same interest was seized under a writ issued at the instance of another creditor of Dingiri Banda, he had paid a sum of Rs. 400 and had it released from seizure. If, however, the interest is liable to be seized and sold, he claims that he is entitled to be paid the Rs. 400 before it is sold in execution. The learned District Judge has taken the latter view, and has declared that it is open to the plaintiff to seize and sell the leasehold only on payment of Rs. 400 to the defendant. The plaintiff appeals, and it is contended for him that his right to sell the interest in question is absolute and unqualified. In *Gopalsamy v. Ramasamypulle* (*supra*) the position of a purchaser from heirs was discussed, and Van Langenberg A.J. said :—

> "A conveyance by the heirs is undoubtedly valid (vide *Silva v. Silva*[1]). But, as observed by Hutchinson C.J., the personal representative still retains power to sell the land conveyed for the purposes of administration, and this includes the right of a creditor to follow the property for the payment of his debt, and it is not competent for the heirs to dispose of the assets of an estate to the detriment of the creditors (vide *Ekanayake v. Appu*[2])."

[1] (1899) 3 N. L. R. 350.

[2] (1907) 10 N. L. R. 234.

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The plaintiff is, therefore, entitled to seize and sell the leasehold interest under his decree. But what is the effect of the payment of Rs. 400 by the defendant to a creditor of the estate who seized this same interest? In *Fernando v. Perera*[1]—a decision of the Full Bench—a plaintiff, as administrator, claimed to sell certain property which had already been sold by the heirs. It was admitted that the sale had been for the purpose of paying off two mortgages on the land. It was held that as with the money realized by the sale the mortgagee had been paid off, it was not open to the administrator to overturn the title of the purchaser.

Clarence J. said :—

"It is undoubtedly good law that purchasers who take from the heirs and not from a properly appointed legal representative, take subject to the risk of having to defend their purchase, should the administrator show *primâ facie* cause entitling him to follow the assets in their hands—certainly so in the case of merely voluntary conveyances. In the present case, it is admitted on the pleadings that the intestate heirs sold this land to pay off two incumbrances and that the incumbrances were in fact paid off. Yet plaintiff seeks to eject the purchaser, and to sell the land to another purchaser freed from the incumbrances.

"In my opinion, plaintiff's action clearly fails, and should be dismissed with costs. *Ahamat v. Cassim*[2] is an authority."

Dias J. said :—

"Before plaintiff took out administration to Nikulas, the common estate of Nikulas and his wife vested in their heirs, and they had a perfect right to convey as they did the land in question to the defendants; and the plaintiff cannot be allowed, by a subsequent administration, to overturn that title, except under special circumstances, which do not exist in this case. The conveyance to the defendant is supported by a very good consideration, *i.e.*, the payment of a mortgage debt secured on the property."

Burnside C.J. disagreed, and expressed the view that the administrator was not in any way bound by the sale by the heirs.

Now, in *Gopalsamy v. Ramasamypulle* (*supra*) a similar point came up for decision. The administrator of the estate of one Erawady, the second defendant in the case, conveyed the lands of the estate to the heirs for the purpose of closing the estate. The heirs sold the land for Rs. 2,500 to the first defendant, who paid Rs. 1,414·49 out of the consideration to the plaintiff in the action,

[1] *(1887) 8 S. C. C. 54.*

[2] *(1878) 1 S. C. R. 36.*

who had seized the lands in question in execution of a mortgage decree he had obtained. The balance Rs. 1,085·51 was paid to the heirs, and was used by them for their own benefit and not for paying any debts of the estate. It was held by this Court that, as the first defendant had failed to prove, as he was bound to do, if he was to keep the lands he had purchased, that the whole of the purchase amount was expended for the purposes of administration, the plaintiff was entitled to levy execution for the balance sum only, and that if the plaintiff's debt exceeded the balance, he could not proceed for the excess against the lands seized.

Van Langenberg A.J. said :—

> "In the case of *Fernando v. Perera* (*supra*) the contest was between the administrator as plaintiff and the purchasers from the heirs. The latter succeeded on the ground that the consideration for the purchase was wholly applied for the benefit of the estate. In my opinion the onus lay on the first defendant to show that the whole of the purchase money was expended for the purposes of administration, and as he has failed to discharge this burden as regards the sum of Rs. 1,085·51, the plaintiff, I think, is entitled to levy execution to this amount. I am unaware what the exact sum is, which is due to the plaintiff, but, if it exceeds this sum, he cannot proceed for the excess against the shares seized."

These cases are, therefore, an authority for the proposition that where the heirs of an estate sell property belonging to the estate, such sale is valid if the consideration has been utilized for paying debts of the estate. But if only a part of the consideration has been utilized, the sale will be subject to the payment of the balance, and the property transferred can be sold in execution for the realization of the balance only. Such a sale becomes in effect a sale by the administrator, or a transaction by which he has raised money on property belonging to the estate. Applying that principle here, we find that Rs. 400 has been expended by the purchaser, the defendant, in payment of debts due from the estate. He must, therefore, get credit for the sum so spent if the property purchased by him is to be sold for payment of other debts of the estate. The leasehold interest would have to be valued, and the plaintiff would be entitled to levy execution for the difference between the value of the leasehold interest and the Rs. 400 paid by the defendant. It is not easy to value a leasehold interest, and the leasehold interest in question has but three years to run, and its value decreases every

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month. In the special circumstances of the case, the order made by the learned District Judge is a fair one, and if the leasehold interest realizes more than Rs. 400 at the execution sale, the plaintiff would be able to recoup himself.

I would, therefore, uphold the order of the District Judge, and dismiss the appeal, with costs

AKBAR A.J.—I agree.

*Appeal dismissed.*