Present : Wood Renton J.

June 13, 1911

MUTTU MENIKA *v.* APPUHAMY.

167—*C. R. Kandy*, 19,709.

Claim dismissed for default of appearance—Claimant cannot move to re-open claim—Must bring an action under s. 247, Civil Procedure Code.

A person whose claim was dismissed for default of appearance must bring an action under section 247 ; he should not move to re-open the claim inquiry (by explaining the default) on the ground that the order was made *ex parte*.

Where the Legislature has enacted a particular remedy for a grievance in terms which show that it intended that remedy to be the only one open to an aggrieved party, redress cannot be sought by any other form of proceedings.

THE facts are set out in the judgment of Wood Renton J.

Allan Drieberg, for appellant.

S. Obeyesekere (with him *H. A. Jayewardene*), for respondent.

June 13, 1911. WOOD RENTON J.--

This case raises a short and interesting point, which has been clearly and carefully argued on both sides. The first plaintiff-appellant is alleged to be entitled to the land, which is the subject-matter in dispute, on a partition decree in D. C. Kandy, 18,354, dated May 23, 1907. She leased the land, jointly with her husband, to the defendant-respondent in 1908 for a period of five years. In the present action the first plaintiff-appellant sued the respondent for the recovery of rent due. The respondent denied liability on the grounds (*a*) that the land in question had been sold against the second plaintiff by a third party on a writ, and that the respondent had bought his right, title, and interest at the Fiscal's sale ; and (*b*) that the first plaintiff-appellant had claimed the land when seized in execution ; that her claim had been dismissed for default of appearance ; and that, as she had failed to bring any action under section 247, she could no longer set up her title in the present action. The material facts, as they appear from the various orders that have been made in the course of the proceedings, are these. When the land was seized it was claimed by the first plaintiff-appellant ; her claim was dismissed for default of appearance ; she subsequently

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appeared and explained her default, and her claim was allowed. The original order dismissing her claim was made *ex parte*, and the order setting that dismissal aide was made *ex parte* also as regards the purchaser. The purchaser subsequently applied to have the second order set aside on the grounds that it had been made *ex parte* and that it was irregular, and his application to vacate the order was duly allowed. It is obvious that the first and the most important question is whether the first plaintiff-appellant had any right to have the order dismissing her claim set aside on the ground that it had been made *ex parte*. The Commissioner of Requests, in the judgment from which the present appeal is brought, has answered that question in the negative. "I hold," he says, "that the first plaintiff's remedy was an action under section 247, which she did not take." In my opinion that finding is right. It seems to me that the object of the group of sections concerned with claims to property seized is to secure a summary inquiry into such claims, and to provide that the result of that inquiry shall be decisive as to the rights of parties, subject always to the remedy indicated in section 247. I do not think that it is necessary to decide the question as to whether the Court has an inherent power to set aside *ex parte* orders, for I think that we are bound by the principle that, where the Legislature has enacted a particular remedy for a grievance in terms which show that it intended that remedy to be the only one open to an aggrieved party, redress cannot be sought by any other form of proceedings. I need not quote the language of section 247, with which we are all familiar. But it seems to me that the last clause in that section strongly corroborates the view that I take of the point now under consideration. It is these terms : "Subject to the result of such action, if any, the order shall be conclusive." There can be no doubt but that an *ex parte* order is an order within the meaning of this group of sections, and I think, therefore, that in terms of section 247 it is conclusive, unless the party aggrieved by it brings the action for which that section provides. On the ground that I have stated I uphold the view of the learned Commissioner of Requests and dismiss the appeal with costs.

Appeal dismissed.