

March 6, 1931. DRIEBERG J.—

The appellant, a Fiscal's Officer, was entrusted with an order to sell land issued in execution of a mortgage decree entered in C. R. Kandy No. 6,962. When he went to the land he says he was pushed by all the respondents; the first respondent attempted to cut him with an axe, the second respondent threatened him with a pestle, and the third respondent threatened him with a chopper. It was elicited from the appellant that the land mortgaged was not situated within the territorial jurisdiction of the Court of Requests of Kandy. The proctor for the accused contended therefore that the Court had no jurisdiction to enter the decree, that the order to sell was bad in law, and that the resistance was not illegal. He relied on the judgment in *Davith-appuhamy v. Perera*¹ and *Mudalihamy v. Isma et al.*²

The first of these cases only decides that in a hypothecary action in the Court of Requests the Court in which the action should be brought is to be determined by section 77 of the Courts Ordinance and not by section 9 of the Civil Procedure Code.

The second case was one in which a headman acting on the order of a Rate-mahatmaya seized a buffalo in the possession of the accused on a charge under the Game Protection Ordinance of a non-cognizable offence. As the search in such a case could only be made on the order of a Police Magistrate, the resistance to search and seizure by the accused was held not to be an offence as the act of the headman was not one legally authorized.

The proctor for the complainant admitted the correctness of this contention which the learned Police Magistrate upheld, and the accused were acquitted.

The complainant appeals with the sanction of the Solicitor-General.

¹ (1908) 11 N.L.R. 150.

² (1916) 19 N.L.R. 286.

1931

Present : Driberg J.

BANDA v. SIYATU.

38—P. C. Panwila, 16,205

Decree—Defendant consents to judgment—Resistance to execution of decree—Legality of decree.

Where the defendant in an action admitted the jurisdiction of a Court by consenting to judgment he cannot thereafter question the legality of the decree in resisting execution.

A PPEAL from an order of the Police Magistrate of Panwila.

Wijeymane, for complainant, appellant.

It was contended before me that the decree was one against the first respondent and that so long as it stood the first respondent could not question the legality of an order for its execution. The name of the defendant in C. R. Kandy No. 6,962 is the same as that of the first respondent in this case, but as it did not appear in the evidence that it was the same person, I referred the matter to the Magistrate for information. From his letter of February 20, 1931, referring to the document P it is clear that this is so and that the second respondent is the wife and the third respondent the child of the first respondent.

This is not a case of a Court of Requests acting in a matter in which it has no jurisdiction whatever. The test of the situation of the land is applied only for the purpose of determining which Court of Requests has jurisdiction. If the first respondent questioned the jurisdiction of the Kandy Court he should have done so expressly in his answer—section 76 of the Civil Procedure Code.

I have sent for and examined the record in C.R. Kandy No. 6,962 and I find that the judgment was entered of consent for the amount admitted by the first respondent, and it was agreed that writ was not to issue for three months; decree was entered on this and execution was not applied for until three months had passed.

It is not possible for the first respondent to say that he is not bound by the decree and that he is entitled to resist its execution.

I set aside the judgment of acquittal.

The Magistrate will hear and adjudicate upon the charge brought against the accused.

Set aside.