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*Present: De Sampayo J.*

JANIS APPU *v.* BABA ALI J *et al.*

435—C. R. Negombo, 24,477.

*Paulian action—Action under s. 247 of the Civil Procedure Code—Jurisdiction—Claim upheld by District Court of Negombo—Action in Court of Requests of Negombo to have deed of transfer declared to have been executed in fraud of creditors and land declared liable to seizure and sale—Land situated outside jurisdiction of Court of Requests.*

The plaintiff brought this action in the Court of Requests of Negombo against his judgment-debtor (first defendant) and the successful claimant (second defendant) to have it declared that the deed of transfer executed by the first defendant in favour of the second defendant was in fraud of creditors, and that the property was liable to be seized and sold under plaintiff's writ in D. C. Negombo, No. 10,501. The lands were situated, and the defendants resided, and the deed of transfer was executed, at Tawalanpitiya, a place outside the local limits of the jurisdiction of the Court of Requests of Negombo.

*Held*, that the Court of Requests of Negombo has no jurisdiction, whether the action be looked upon as a Paulian action or an action under section 247 of the Civil Procedure Code.

The questions for determination in an action under section 247 relate to and involve a declaration of title to the property, and the action, subject to other factors which may affect the jurisdiction of the Court, should be brought in Court within whose local limits the property is situate.

**A** PPEAL from a judgment of the Additional Commissioner of Requests, Negombo (M. S. Shresta, Esq.). The facts are set out in the judgment.

*E. G. P. Jayatileke*, for plaintiff, appellant.—The Court of Requests of Negombo had jurisdiction to try this case, as the cause of action arose within its limits. The defendant preferred his

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claim in Negombo, therefore the plaintiff was entitled to institute the action under section 247 in Negombo. The cause of action was the claim made by the defendant. [De Sampayo J.—In *Werthelis v. Daniel Appuhamy*<sup>1</sup> it was held that the cause of action under section 247 is the wrongful seizure.] That applies to an action instituted by the unsuccessful claimant. It follows from *Werthelis v. Daniel Appuhamy*<sup>1</sup> that when the unsuccessful creditor institutes the action, the cause of action is the claim preferred by the claimant. [De Sampayo J.—This action is a Paulian action, and the cause of action with regard to it is the execution of the alleged fraudulent deed.] The plaintiff would not have been affected if the defendant merely had the deed in question executed and kept it in his possession. The plaintiff was affected only when defendant claimed the land on the strength of that deed.

No appearance for the respondents.

*Cur. adv. vult.*

January 15, 1917. DE SAMPAYO J.—

This case raises a difficult and, so far as I know, new point with regard to the jurisdiction of the Court to entertain an action under section 247 of the Civil Procedure Code. In D. C. Negombo, No. 10,501, the first defendant in this action was ordered to pay to plaintiff certain costs, which were taxed at Rs. 64.49, and in execution of that order the plaintiff seized some shares of land situated at Tawalanpitiya and valued at Rs. 100. The second defendant claimed the said shares of land upon a deed of transfer made by the first defendant in favour of the second defendant, and the claim was upheld by the District Court of Negombo in the execution case. The plaintiff then brought this action in the Court of Requests of Negombo against both the defendants to have it declared that the deed of transfer was in fraud of creditors, and that the property was liable to be seized and sold under the plaintiff's writ in D. C. Negombo, No. 10,501. The Commissioner has upheld a plea to the jurisdiction taken by the defendants, and has dismissed the plaintiff's action.

It is admitted that Tawalanpitiya, where the lands are situate and the defendants reside, and where also the deed of transfer was executed, is outside the local limits of the jurisdiction of the Court of Requests of Negombo. It is contended for the plaintiff, however, that the cause of action arose within those limits. Strictly speaking, this action is not one under section 247 of the Civil Procedure Code, but a Paulian action, with regard to which the cause of action is the execution of the alleged fraudulent deed, and as that took place outside the jurisdiction of the Court of Requests of Negombo, the

<sup>1</sup> (1909) 12 N. L.R. 196.

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objection to the jurisdiction, so far as the Paulian action is concerned, appears to me to be well founded. But the case was argued both at the trial and in appeal as though the action was purely one under section 247, consequent upon the order on the claim in execution, and it is therefore necessary to deal with the case on that footing.

What is the cause of action, if any, arising from the seizure of property and the order on a claim in execution? To my mind it is hardly proper in this connection to speak of a cause of action in the ordinary sense. It appears to me that an action under section 247 does not directly arise from any act of the parties, but is a special statutory action provided for the determination of one of two questions arising from the order of Court in the claim proceedings, namely, (1) where the claim is disallowed, whether the claimant has the right which he claims to the property in dispute, and (2) where the claim is upheld, whether the execution-debtor has, as against the claimant, a saleable interest in the property seized in execution of the decree in the plaintiff's favour? Both these questions relate to and involve a declaration of title to the property, and I think that subject to the other factors which may affect the jurisdiction of the Court, the action should be brought in the Court within whose local limits the property is situate. Sometimes misleading expressions are used in regard to actions under section 247. For instance, the seizure of the claim is often described as being "wrongful," and the action under section 247 as one brought to "set aside" the wrongful seizure or the wrongful claim, as the case may be. This mode of expression, though it may be compendious and convenient, is not justified by the language of the Code. Take the case of a claim. If the claim be "wrongful," it seems to me that a cause of action would accrue to the plaintiff at once to have it so declared and the property sold by means of a common law action. But it is certain that the only action available to the plaintiff is the statutory action under section 247 after the Court has made an order on the claim. In the case of a seizure complained of by the true owner of the property, however, it is possible to conceive of a common law action being available to him, apart from the provisions of the Code with regard to claims, inasmuch as the seizure, if it be not a physical disturbance of possession, is at all events a distinct infringement of the rights of ownership. But if the owner elects to proceed under the Code and make a claim, he, too, is restricted to an action under section 247 consequent upon the Court's order on the claim without reference to the existence of any particular cause of action.

For these reasons I think the judgment appealed against is right. The appeal is dismissed, with costs.

*Appeal dismissed.*