

Present: Ennis J. and Shaw J.

1917.

MUTTUSAMY v. SATHASIVAM AIYAR et al.

500—D. C. Colombo, 46,229.

Injunction—Money deposited in Court under the Land Acquisition Ordinance—Separate action against a claimant—Application for issue of injunction to restrain defendant not to draw money pending decision of action—Civil Procedure Code, s. 669.

The Government paid into Court, in case No. 2,367, a sum of money as compensation for the acquisition of a land. The plaintiff filed petition of intervention too late to establish his claim in that case. He then instituted the present action to establish his claim against the defendants, and prayed in his plaint for an injunction restraining the defendants from drawing a sum of Rs. 4,200.

Held, that the Court had power, under section 669 of the Code, to issue the injunction, and that this was a proper case for the exercise of the power of the Court.

THE facts appear from the judgment.

Bawa, K.C. (with him *Tisseverasinghe*), for appellant.

Driberg, for respondents.

Cur. adv. vult.

March 7, 1917. ENNIS J.—

This is an appeal from an order refusing to grant an injunction restraining the defendants from drawing a sum of Rs. 4,200, part of the compensation paid into Court by the Government in Crown case No. 2,367, as compensation for the acquisition of certain land in Captain's Garden, Colombo. The plaintiff-appellant filed a petition of intervention in Crown case No. 2,367 too late to establish his claim in that case. He then instituted the present action to establish his claim against the defendants, and prayed in his plaint for an injunction. The learned District Judge refused to grant an injunction, on the ground that it would "negative the effect of the order made in case No. 2,367 rejecting the plaintiff's application to intervene".

The application for an injunction was made under section 87 of the Ordinance and section 669 of the Civil Procedure Code. The respondents contend that the present action is merely a claim for the payment of money, and that the application is really one under section 653 of the Civil Procedure Code for sequestration before judgment. The argument is that the defendants alone have the

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right to draw the money directed to be paid to them in the case No. 2,367, and that it no longer partakes of the nature of immovable property.

Section 36 of the Land Acquisition Ordinance, No. 3 of 1876, provides that an award under the Ordinance shall not affect the liability of any person, who may receive compensation, to pay the same to the person lawfully entitled thereto. The conversion of the immovable property into money cannot be prevented by any claimant, and it seems to me that so long as the compensation for the land has not been paid out by the Court receiving the deposit, it still partakes of the nature of immovable property, and a specific claim, as in this case, for the money so deposited may be made. A somewhat similar decision, in the case of a sale under the Partition Ordinance, was given in the case of *Sebastian Fernando v. Nonohamy*.¹ The circumstances of the present case are such that there is no particular reason why an order should not be made under section 669 of the Civil Procedure Code for the detention of the compensation pending the termination of the suit.

I would allow the appeal. The costs to be costs in the cause.

SHAW J.—

I agree. The money that the plaintiff seeks to restrain the defendant from drawing represents the share in the land acquired that he claims belongs to him, and is the subject-matter of the present suit. I think the Court has power, under section 669 of the Code, to make an order for its detention, pending the decision of the suit, on such terms as to security as it thinks fit, and that this is a proper case in which to exercise the power. The application is for an injunction, but the effect is the same.

Appeal allowed.

¹ 1 Bal. 140.