1953 *Present :* **Gratiaen J. and Gunasekara J.**

AHAMADULEVVE KADDUBAWA *et al.*, Appellants, *and* N. SANMUGAM, Respondent

S. C. 400—D. C. Batticaloa, 285/L

Actio rei vindicatio—*Plaintiff must show title at date of action—Irrigation Ordinance, No. 32 of 1946—Section 88 (1)—Effect of words "as though such sale had never been made".*

In a *rei vindicatio* action the plaintiff must possess at the date of the action the title which he asks the Court to declare to be his. The provision, therefore, of section 88 (1) of the Irrigation Ordinance that a land which has been sold for non-payment of rates shall, upon the payment of the amount due from the defaulter, revest in the defaulter or his heir " as though such sale had never been made " will not avail the defaulter or his successor in title if, at the time he institutes an action against a third party for declaration of title to the land, the title is still vested in the Crown, although during the pendency of the action he obtains a cancellation of the Crown's title in his favour in terms of section 88 (1) of the Irrigation Ordinance.

APPEAL from a judgment of the District Court, Batticaloa.

C. Renganathan, for the defendants appellants.

S. Nadesan, with *S. Sharvananda*, for the plaintiffs respondents.

Cur. adv. vult.

February 11, 1953. GRATIAEN J.—

The plaintiff instituted this action on 3rd July, 1946, for a declaration that he was the owner of an undivided half share in the property described in the schedule to the plaint.

A predecessor in title of the plaintiff had defaulted in the payment of certain rates due in respect of the property under the Irrigation Ordinance (Cap. 312). The property was in due course put up for sale and purchased on behalf of the Crown by the Government Agent; and, by virtue of two certificates of sale dated 26th May, 1930, and 26th September, 1931, which were issued under section 66 of the Ordinance, the property became vested in the Crown " free from all encumbrances whatsoever, any law or custom to the contrary notwithstanding ". It is common ground that the property continued to be vested in the Crown at the time when the present action commenced. This circumstance was, in my opinion, fatal to the plaintiff's claim. There is no substance in the contention that he was nevertheless entitled to succeed because on 24th November, 1950—i.e., more than 4 years after the proceedings were instituted—he had obtained, as an " heir " of the original defaulter, a cancellation by the Government Agent of the certificates of sale in favour of the Crown in terms of section 88 (1) of the Irrigation Ordinance, No. 32 of 1946. This section provides that, upon the registration of an endorsement by the Government Agent cancelling a certificate of sale in favour of the Crown, the land " shall revest in the defaulter or, as the case may be, vest in his heir *as though such sale had never been made* ". I shall assume for the purposes of this appeal (although I do not decide) that the section applies to a property purchased on behalf of the Crown under the provisions of the earlier Ordinance (Cap. 312) which has since been repealed.

I cannot agree that the effect of the words " as though such sale had never been made " is to vest the property in the defaulter (or his heir) *with retrospective effect*. As I read section 88 (1), the words relied on by the plaintiff merely indicate that, upon due registration of the necessary endorsement, title to the property which had previously vested in the Crown " free from all encumbrances " is transferred by operation of law to the defaulter (or his heir) without the necessity for any formal conveyance or assignment in his favour by the Crown. The language of the section also indicates that, whereas the Crown may have obtained a statutory title which was unassailable, the defaulter (or his heir) in whom the property subsequently " revests " (or " vests ", as the case may be) would not enjoy a title of greater validity than that which the defaulter had originally enjoyed. In other words, the quality

of unassailability attaching to the title of the Crown is not transmitted to the defaulter or his heir, because the purchase by the Crown " free from all encumbrances " is deemed to have " never been made ".

In the view which I have taken, the plaintiff's claim fails because he had no title to the property at the time when the action commenced, and the subsequent title which is alleged to have come into existence after that date cannot avail him in these proceedings. It is a long-established rule of law that " when a plaintiff comes into Court praying for a declaration of title, he must possess at that time the title which he asks the Court to declare to be his "—*per* Lawrie A.C.J. in *Silva v. Hendrick Appu* [1]. I would therefore allow the appeal and dismiss the plaintiff's action with costs both here and in the Court below.

GUNASEKARA J.—I agree.

Appeal allowed.

[1] *(1895) 1 N. L. R. 13.*