

1947

Present: Dias J

CAROLIS APPUHAMY, Appellant, and PODI NONA *et al.*,
Respondents.

S. C. 22—C. R. Gampaha, 3,355.

Execution—Land sold in execution of decree—Obstruction to execution—Alleged irregularity of decree—Liability.

The fact that the decree entered in a case is irregular does not entitle a party to obstruct execution of the decree. His proper remedy is an application to the Court for redress.

A PPEAL from a judgment of the Commissioner of Requests, Gampaha.

E. B. Wikramanayake (with him *T. B. Dissanayake*), for the plaintiff appellant.

S. C. E. Rodrigo, for the defendants, respondents.

May 21, 1947. DIAS J.—

The plaintiff, who was not a party to the present proceedings, in *C. R. Gampaha*, No. 8,951, purchased at the fiscal sale held in execution of the decree in that case, a certain land. In order to obtain a fiscal's transfer he had to deposit the requisite fees for the survey. When the surveyor

went to the land, William, the defendant, who is now dead and is represented by the first defendant, assisted by the other defendants obstructed the surveyor and turned him out. Thereupon the plaintiff had to incur further expenditure to get the land surveyed. He is now claiming that sum from the defendants as being direct damages flowing from the wrongful act committed by the defendants in obstructing the fiscal's surveyor. The facts are not in dispute, but it is strongly argued that the conduct of the defendants in resisting the surveyor is not wrongful because the decree in the case in which execution was issued was irregular. It has been held in the case of *Appuhamy v. Thailamah*¹ and *Wijeratne v. Mendis Appu*² that even if a decree is later set aside for an irregularity, a *bona fide* purchaser at a fiscal sale under that decree would not be affected. Granting that the proceedings which culminated in the decree are irregular, there is clear authority for the proposition that William, instead of taking the law into his own hands by resisting the officer of the Court, should have sought his remedy by applying to the Court for redress. In the case of *In re Molamure*³ it was held that it is an established rule that it is not open to any party to question the orders of the Court or any process issued under the authority of the Court by disobedience. There is no act which the Court may do which may not be questioned in a proper form and on a proper application. That principle was upheld in the later case of *Gnanamuttu v. Chairman, U. D. C., Bandarawela*⁴.

The Commissioner of Requests seems to think that the conviction of William in the Magistrate's Court for obstructing a public officer is bad. That may or may not be so and we are not concerned with it. I hold that these defendants by their wrongful act have caused direct loss to this plaintiff and that, therefore, he is entitled to recover damages. I set aside the judgment appealed from and enter judgment for him as prayed for with costs both here and below.

Appeal allowed.
