

Present: Pereira J.

1913.

BANDA *et al.* v. MAHATMAYA.

74—C. R. Ratnapura, 12,422.

Action under s. 247, Civil Procedure Code—Proof of possession—Shifting burden of proof of title to other side.

In an action under section 247 of the Civil Procedure Code, although the question involved is one of title and not merely of possession, it is, nevertheless, open to either party to prove possession as presumptive evidence of title, and thus shift the burden of displacing the presumption on to the other side.

THE facts appear from the judgment.

H. A. Jayewardene, for defendant, appellant.

J. Grenier (with him *de Silva*), for plaintiffs, respondents.

1913.

June 11, 1913. PEREIRA J.—

*Banda v.
Mahatmaya*

This is an action under section 247 of the Civil Procedure Code brought by an unsuccessful claimant of property seized in execution. The Commissioner holds that the plaintiffs have produced very strong documentary evidence to show that they and their predecessors in title have been in possession of the land in claim since 1869, but he, at the same time, says that he is convinced that the land was originally property of the Crown. On this it is argued that the plaintiffs cannot succeed, because it has not been shown that they have been in possession of the land long enough to entitle them to claim it as against the Crown by right of prescription. But the Crown is no party to this case. The contest or competition is one involving the plaintiffs' rights on the one side and the rights of the defendant's execution-debtor on the other, and as against the latter the plaintiff has proved prescriptive possession. Moreover, quite apart from the matter of prescriptive possession, the plaintiffs by proving possession have led presumptive evidence of title. The question in an action under section 247 of the Civil Procedure Code is, of course, not one of possession, but title; but by way of establishing title there is nothing to prevent one of the parties from leading evidence of possession and claiming the benefit of section 110 of the Evidence Ordinance. That section provides that when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. It may often be risky to rely only on this mode of proving ownership, but it is sufficient to shift the burden on to the other side. I affirm the judgment appealed from with costs.

Affirmed.