

Present: Pereira J. and Ennis J.

1914.

HELENA HAMINE *et al.* v. NONAHAMY *et al.*

60—D. C. Colombo, 33,943.

Married woman—Locus standi in judicio—Judgment in favour of husband and wife—Joint judgment-creditor.

Under the Roman-Dutch law a married woman has no *locus standi in judicio*, but where, rightly or wrongly, a wife is brought in, as a separate party, to a case along with the husband, and judgment is entered in favour of both, she has all the rights and privileges of a joint judgment-creditor, and it is not open to the husband to enter into a compromise with the judgment-debtor or receive payments from him to her prejudice.

THE facts appear from the judgment.

A. St. V. Jayewardene (with him Canakeratne), for defendant, appellant.—A wife has no *locus standi in judicio* (Voet 5, 1, 14). A judgment in favour of the wife is a chose in action, and vests absolutely in the husband. The discharge granted by the husband operates as effectively against the wife as against the husband.

Arulanandam, for first plaintiff, respondent.—Our husband is in bad terms with us, and has acted collusively with the defendant to deprive us of the benefit of the decree. The Roman-Dutch law grants relief in analogous cases. If our husband withheld his authority we could have obtained the authority of Court to sue alone (Voet 1, 5, 16). The defendant has not applied, under section 349 of the Civil Procedure Code, to have satisfaction of decree certified, and we are therefore entitled to proceed with the execution of the decree in our favour.

A. St. V. Jayewardene, in reply.

Cur. adv. vult.

July 2, 1914. PEREIRA J.—

In this case the plaintiffs are wife and husband. They are described in the caption of the plaint as (1) Dona Helena assisted by her husband (2) Punchi Singho Appuhamy. The plaint with this caption should not have been accepted, because in a legal point of view there is no sense in the word "assisted by her husband" as used in the plaint. Perhaps they were intended to show that the real plaintiff in the case was the first (Dona Helena); but the words were insufficient to give the husband, who was named and numbered as a separate plaintiff, a minor or subordinate position in the case. Anyway, the decree in the case was entered in favour

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of both the plaintiffs, and on July 2, 1912, their application for execution was allowed, and an order issued to the Fiscal to realize the amount of the judgment by the sale of the property mortgaged by the defendant. The property was accordingly sold and purchased by the first plaintiff, in whose favour a conveyance was duly executed. The defendant has since moved, on notice to the plaintiffs, that the sale in execution be cancelled, and satisfaction of the decree be recorded as certified in terms of section 349 of the Civil Procedure Code. The present appeal is from the District Judge's order disallowing the application. The reason given by the defendant for his application is that he on August 30, 1912, by deed No. 3,688, transferred the mortgaged property to the second plaintiff in full settlement of the claim against him in the case. It has been argued that the second plaintiff, being the husband of the first, was at liberty to come to any arrangement with the defendant and discharge him from all liability on the decree, and authority has been cited that shows that a wife has no *locus standi in judicio*, and that it is for her husband alone to appear for her in Court. As a rule, that is no doubt a correct proposition, but where a wife, rightly or wrongly, has been brought in as a separate party to a case, and judgment has been entered in her favour, she is entitled to all the rights and privileges of such a party. Voet lays down (5, 1, 19) that if a woman, contrary to the provision of law, appear in a judicial proceeding and succeed therein, the judgment pronounced in her favour will hold good. With reference to the decree in this case, the first plaintiff as a party to the case had equal rights with the second; and in the case of joint decree-holders, one cannot enter into a compromise or receive payments to the prejudice of the others (see the cases collated at page 538 of *O'Kinealy's Code of Civil Procedure, 5th edition*), although possibly where the share of each is admitted one may receive his own share. In the present case there is no such admission: the plaintiffs are merely joint decree-holders. For this reason, if no other, the defendant was not entitled to succeed. There are, however, other reasons as well. The defendant omitted to have the alleged satisfaction of the decree certified, and the execution proceedings were therefore in order. The defendant has, moreover, as held by the District Judge, acted in collusion with the second plaintiff to defraud the first.

I would dismiss the appeal with costs.

ENNIS J.—I agree.

Appeal dismissed.