

SARAVANAMUTTU v. MARUTAPPA.

D. C., Jaffna, 1,248.

1899.

August 28.

*Sale in execution—Title of purchaser under the Fiscal—Delay of such purchaser to obtain conveyance—Power of execution-debtor to sell land already sold in execution—Prior registration of deed of conveyance from execution-debtor—Civil Procedure Code, s. 289.*

Where a purchaser in execution did not by his conduct lead the execution-debtor or his vendee to believe that he had abandoned his rights under the sale in execution, and where the purchaser in execution, by no fault of his, failed to have his deed registered prior to the deed in favour of the execution debtor's vendee, *held* that the former deed should prevail, as, in terms of section 289 of the Civil Procedure Code, the grantee of the Fiscal is deemed to have been vested with the legal estate from the time of the sale, when confirmed.

**T**HIS was an action for declaration of title and for ejectment. Plaintiff's title was based upon a Fiscal's conveyance in his favour dated 4th August, 1896, and registered on 13th August, 1896, which purported to convey the interest of one Viravaku to the plaintiff. The defendant claimed the land under a deed in his favour executed by Viravaku on the 29th April, 1896, and registered by him on the 30th April, 1896.

It appeared that the sale in execution was held on 20th July, 1894; that on the Commissioner refusing to confirm it, his order was set aside in appeal on 21st February, 1895; that the order of confirmation of the sale was obtained on the 27th August, 1895; that the Fiscal granted the conveyance on the 4th August, 1896; that in the meanwhile the execution-debtor sold the land to the defendant on the 29th April, 1896. The case was argued upon one issue only, viz., Whether the defendant's deed of April, 1896, or the plaintiff's deed of May, 1896, should prevail? The District Judge held in favour of the plaintiff and entered judgment for him.

Defendant appealed.

*Wendt*, for appellant.

*Sampayo*, for respondent.

*Cur. adv. vult.*

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August 28, 1899. LAWRIE, A.C.J.—

Since the passing of the Ordinance No. 2 of 1899, a judgment-debtor whose land has been sold in execution cannot thereafter by a conveyance give good title to the land already sold by the Fiscal. A subsequent conveyance by the execution-debtor becomes void on the execution of a conveyance by the Fiscal. The grantee is by 289th section of the Civil Procedure Code deemed to have been vested with the legal title from the time of the sale.

There is in this case the special circumstance that the sale in execution was confirmed by the Court after the decree had been set aside. In my opinion this was wrong; proceedings in execution of an existing decree stand on a different footing from proceedings in execution of a decree which has been set aside, but the order confirming the sale still stands. No appeal was lodged. As the subsisting order of a competent Court it must be respected.

Another question is whether the purchaser at the Fiscal's sale is estopped from questioning the right of the debtor to sell. That was partly the ground of our decision in *D. C., Galle, 2,479, 3 N. L. R. 341.*

Here the sale in execution was in July, 1894. The purchaser did not sleep over his rights. He asked for confirmation of the sale on 24th November, 1894. From opposition and from an appeal the proceedings on the application for confirmation were prolonged till August, 1895, when the sale was confirmed. The purchaser got the transfer on 4th August, 1896. In my opinion, the purchaser did not by his conduct lead the execution-debtor or the purchaser from him to believe that he had abandoned his rights under the sale in execution. He is not estopped from challenging the sale by the debtor on 13th August, 1896.

I would affirm the judgment for plaintiff, holding that he has title, and that the defendant has no title, because the conveyance he holds was granted after a Fiscal's sale in which title passes from the owner to the purchaser, provided that the latter gets the sale confirmed and obtains a conveyance. If he does so, the law deems him to have been the owner from the date of the sale.

BROWNE, A.J.—

Viravaku was owner of the land in question. Decree was entered against him, and in execution of the writ thereon (without its being shown that the seizure under the writ was registered) the land was auctioned by the Fiscal on 20th July, 1894, to the plaintiff as the highest bidder.

Apparently that decree was set aside on the 20th September, 1894, and when the purchaser moved for an order confirming the sale to him, the Commissioner on 22nd November, 1894, refused to grant him confirmation, and referred him to a separate action to have it decided whether he was entitled thereto or not. That order was set aside by this Court on 21st February, 1895, and the Commissioner was directed to determine that question in the original action, and he subsequently on 27th August, 1895, granted the confirmation. He did not enter into possession, nor did he obtain his Fiscal's conveyance till 4th August, nor register it till 13th August, 1896, and the original debtor was thus able on 29th April, 1896, to sell the land privately to defendant, who registered his conveyance on 30th April, 1896. Which title is therefore to prevail?

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We have not had placed before us the facts and circumstances under which, with full knowledge of the reversal of his decree, the Commissioner deliberately granted the confirmation of the sale. This action is not one to reform the order then made, and it might be possible that in any such litigation there would be parties necessary thereto other than these two purchasers with their rival titles. The plaintiff, it will be remembered, was not the execution-creditor in the Court of Requests action, and would therefore, in my judgment, be entitled to the full benefit of what my lord has said in *Tambyah's Reports*, p. 6, that a sale regularly conducted under a subsisting decree does not become null and void on the decree being reversed. Till that order of confirmation is reformed, we cannot take it to have been regular and valid.

It was contended we should have followed the decree in No. 2,479, *D. C., Galle, 3 N. L. R. 341*. In that case a purchaser in execution in March, 1889, forbore to take out his Fiscal's conveyance or register it till March, 1893, and suffered the debtor to remain in possession. The latter, in December, 1890, conveyed the land to an assignee of a mortgage decree and the conveyance was at once registered.

The facts of that case however differed essentially from the present, in that the latter coming within the provisions of section 289, the validity of the debtor's own conveyance was always dependent upon whether the Fiscal's conveyance in favour of plaintiff would be obtained. As soon as plaintiff obtained it and under the section title vested in him from 1894, the debtor's conveyance of 1896 was worthless.

My lord has pointed out how the grounds of estoppel and superior equity in that precedent are not here applicable.

I therefore agree that the judgment be affirmed with costs.