

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mohamadu Mohideen Hadjar v. Pitchey, from the Supreme Court of Ceylon; delivered 9th June 1894.*

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Present :

LORD HOBHOUSE.

LORD ASHBOURNE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

The question raised on this appeal relates to the title to certain premises assessment Nos. 54 and 55 (formerly No. 55) situated in Bankshall Street Colombo which the Appellant seeks to recover from the Respondent who is in possession and has been in possession for some years.

The premises in dispute formed part of the common matrimonial estate of Pasqual Fernando Anthony Pullé and Ana Selebrem his wife who married in community of goods.

On the 28th of November 1881 the husband and the wife duly made a mutual will disposing of their property and nominating seven persons to be executors.

The husband died on the 11th of September 1882.

On the 27th of November 1882 the widow by deed repudiated the will and elected to take her moiety of the common estate in her own right.

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suit. On the 31st of August 1883 he put up for sale and sold the right title and interest of Susy Fernando Bastian Appu therein.

On the 21st of December 1887 Susy Fernando Bastian Appu died.

On the 11th of September 1888 letters of administration to the estate of the testator with the will annexed were granted to John William Mack the Secretary of the District Court who applied for such administration at the request of the Commissioners of the Loan Board who were creditors of the estate.

On the 14th of December 1888 Mr. Mack as such administrator applied for and obtained the authority of the District Court to sell the premises 54 and 55 Bankshall Street. They were accordingly put up for sale by auction. They were bought by the Appellant to whom they were conveyed by deed dated the 12th of July 1889 duly executed by Mr. Mack the administrator and by Ana Selebrem the widow of the testator and her then husband.

The Appellant thereupon brought this suit to recover the premises. The Respondent resisted the claim founding his title on the Fiscal's sale in August 1883.

The sole question on the appeal was whether the sale by the Fiscal bound the estate of the testator. It was admitted that in the event of its being held that the estate was not bound by the sale it would not be material to consider whether the widow's deed of renunciation was valid or not. Nor was it disputed before their Lordships that the letters of administration must be treated as valid until revoked although they were held to be "void" and "unlawful" by the learned Judges in the Courts below who seem to have been under the impression that Susy Fernando Bastian Appu was still living and the duly constituted legal representative of the testator.



Susy Fernando Bastian Appu not having obtained a grant of probate did not represent the estate of the deceased in the creditor's action and that consequently the seizure and sale of part of the testator's assets under an execution founded upon a judgment in a suit so constituted was ineffectual to bind the testator's estate.

It would certainly be a most dangerous doctrine to hold that creditors could tear an estate to pieces on going through the form of an action against a person who had neither intermeddled with the assets nor duly clothed himself with a representative character so as to become responsible for his acts and defaults to the beneficiaries under the will.

It has been held that an executor even after taking the oath of office may renounce before probate is actually granted. The suggestion which was thrown out that an executor by applying for probate has conclusively accepted the trusts of the will does not seem to merit serious consideration.

Their Lordships will therefore humbly advise Her Majesty that the appeal ought to be allowed, that the judgments of the Courts below ought to be discharged, and that judgment ought to be entered for the Appellant with costs. The Respondent will pay the costs of the appeal to the Supreme Court and of this appeal.

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