

MUTTU CARUPPEN CHETTY v. DE MEL.

D. C., Colombo, 14,836.

1902.
October 15,
and
1903.
February 6.

Fiscal's sale of immovable property—Irregularities in holding sale—Application to set aside the sale—Civil Procedure Code, s. 282—Meddlesomeness of decree-holder—Laches of his agent.

In an application to set aside a Fiscal's sale on the ground that the Fiscal did not carry out the Judge's order in that behalf made, that the selling officer did not start the sale at the value fixed by the Fiscal, and that the property realized much less than the Fiscal's valuation,—

Held, that as the agent of the decree-holder had volunteered to deliver the order of the Court to the Fiscal and had been guilty of gross negligence and carelessness in performing the duty he undertook, the decree-holder could not take advantage of the fault of his agent to set aside a sale which was otherwise regular.

THE facts of this case and the authorities cited in appeal are set forth in the judgment of his Lordship the Chief Justice. The case was argued on the 15th October, 1902.

Morgan de Saram, for appellant.

H. J. C. Pereira, for respondent.

Cur. adv. vult.

6th February, 1903. LAYARD, C.J.—

The decree-holder appeals in this case against an order of the District Judge, dated the 15th October, 1902, refusing an application made by him under section 282 of the Civil Procedure

1902. Code to set aside the sale of certain immovable properties made
October 15, by the Fiscal of the Western Province under a writ issued by the
and District Judge of Colombo in this case.
1903.

February 6. On the 21st October, 1901, the Fiscal of the Western Province
LAYARD, C.J. had seized certain properties situated in the District of Panadure,
under the decree obtained by the appellant in this case on the
3rd September, 1901, and the sale of the properties was fixed
for the 24th January, 1902, but appears to have been subsequently
postponed for the 15th of the next month.

On the 20th January, 1902, the appellant obtained an order
of the District Court on the Fiscal directing him to permit the
appellant to bid for and purchase the properties, and in the event
of the appellant becoming the purchaser the Fiscal was authorized
to give appellant credit up to the amount of the writ. In making
this order the Judge added that the properties were to be put up
for sale at the Fiscal's valuation.

The appellant's complaint is that the Fiscal did not carry out the
Judge's order, and did not at the sale start the properties seized at
the respective values fixed by the Fiscal, and that the properties
realized much less than the Fiscal's valuations.

It has been frequently laid down by this Court that it is the duty
of the Court to inform its officer, the Fiscal, of any order made by
the Court in respect of a sale which is being held under the Court's
directions. *Sangarapulle v. Ramalingam* (2 *Brown's Reports*
373). In this case, however, for some unaccountable reason, the
decree-holder seems to have meddled with the matter. His
kanakapulle appears to have taken upon himself the duty of
delivering the order made on the 15th January to the Fiscal.
He waited until eight days after the order had been made, and on
the 23rd January (only a few hours before the time when the sale
was to be held) delivered the order at the Deputy Fiscal's Office at
Kalutara, and then obtained it back from the Clerk of the Deputy
Fiscal, undertaking apparently to deliver it to the selling officer
at Panadure before the sale took place the next day. The sale of
the 24th January was for some reason or other, which is not
explained, postponed to the 15th February. The appellant does
not attempt to account for the non-delivery of the order to the
selling officer between the 23rd day of January and the 15th
February, the date of the impugned sale. The evidence adduced
by the appellant, however, shows that the kanakapulle only
delivered the Judge's order to the selling officer after the property
had been sold. I do not see how we can possibly allow the
appellant to take advantage of the laches of his own agent. It
was entirely due to the crass negligence, carelessness, and fault of

the kanakapulle that the property was sold without any reserve price being placed upon it by the Fiscal, and the appellant cannot take advantage of the fault of his agent to set aside a transaction which was otherwise regular.

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LAYARD, C.J.

Another objection has been raised by the appellant's counsel. He contends that the properties seized and sold included certain houses, and that if the value of the houses is added to the value of the properties made by the Fiscal there was not sufficient advertisement of the sale, and the sale must be set aside for that irregularity. The respondent replies this was not one of the grounds of material irregularity alleged by the appellant in his application to the District Court, and the District Judge cannot, under section 282 of the Civil Procedure Code set aside any sale unless the "grounds" of the irregularity on which the sale is sought to be set aside have been notified to the Court within thirty days of the receipt of the Fiscal's report. I am inclined to think that the respondent is right, and that the judgment of Burnside, C.J., in *Dahanayake v. Silva* (9 S. C. C. 26), cited by appellant, is only an authority binding on this Court as to the construction to be placed on the sections of the Fiscal's Ordinance referred to in that judgment, and further that the provisions of section 282 of the Civil Procedure Code differ materially from those sections, and are more explicit in its terms, and that appellant cannot rely on any irregularity which has not been notified to the Court within thirty days of the receipt of the Fiscal's report. It is not however necessary to decide that point in this case, because appellant's proctor in the Court below and appellant's counsel in this Court are not agreed as to the irregularity complained of. The proctor says the houses were not seized, and they ought to have been seized and sold; and the appellant's counsel says they were seized and sold, and ought to have been valued. Without knowing what the actual irregularity the appellant complains of is, it is impossible for us to set aside the sale. Further, the difficulty is obviated by the respondent's counsel admitting that the houses were not seized and sold, and consequently the Fiscal was right in not valuing them. To prevent any chance of injustice to appellant, respondent's counsel has agreed to our directing that the houses on the land which respondent admits were not valued nor seized nor sold, be explicitly excepted in the Fiscal's transfer to the respondent.

I would affirm the judgment of the District Judge and order the District Judge to direct the Fiscal to specially exclude the houses from the conveyance to be granted to the respondent, the purchase at the Fiscal's sale. The respondent is entitled to the costs of this appeal.

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MONCREIFF, J.—

I am of the same opinion. It does not lie in the mouth of the appellant to complain that the order of the Court of the 20th January, 1902, did not reach the Fiscal's Office before the sale. He volunteered to do the work of the Court and the Fiscal, and was grossly negligent in doing it. At the same time I do not think that either the Court or the Fiscal was discharged by the officiousness of the appellant from doing the duties which belong to them. I imagine it to be the duty of the Court to inform the Fiscal of such orders as can only be carried out by the Fiscal, and that the Fiscal should transmit those orders to his subordinates.

