

THE
NEW LAW REPORTS
OF CEYLON

VOLUME LVIII

1956

Present : Basnayake, C.J., and K. D. de Silva, J.

USOOF *et al.*, Appellants, and NADARAJAH CHETTIAR *et al.*
Respondents

S. C. 189—D. C. (Inty.) Colombo, 24, 1958

Execution of decree—Fiscal's sale—"Irregularity"—Civil Procedure Code, ss. 273, 282 (2).

The expression "irregularity" in section 282 (2) of the Civil Procedure Code includes an illegality.

Certain immovable property was sold by the Fiscal in execution of a decree. The property consisted of three blocks of land, and, admittedly, the sale was held at a place which, although the Fiscal's officer honestly believed it to be part of the property he was selling, was actually 636 feet away from the nearest of the blocks. Clearly the sale did not take place on any of the blocks which were advertised for sale.

Held, that the failure to conduct the sale "on the spot" as required by section 273 of the Civil Procedure Code was an irregularity within the meaning of section 282 (2). Accordingly, the sale could not be set aside on that ground as the applicant had not proved to the satisfaction of the Court that he had sustained substantial injury by reason of the irregularity. Furthermore, the failure of the applicant to make his application within the prescribed time limit was a fatal omission.

APPPEAL from an order of the District Court, Colombo.

H. V. Perera, Q.C., with *M. Markhani*, for petitioners-appellants.—The estate that was to be sold consisted of 3 blocks which were described in the *Government Gazette*. The sale was, however, held on the factory block which was 636 feet away from the nearest of the blocks advertised for sale. Section 273 of the Civil Procedure Code lays down that sales of immovable properties "shall be conducted on the spot" unless the Court has directed otherwise or parties have consented. In this case neither did the Court direct otherwise nor did the parties consent. This is an imperative provision of law. The failure of the Fiscal to hold the sale "at the spot" advertised renders the sale null and void. The appellants notified to Court certain material irregularities within the 30 days

specified in Section 282 (2) of the Civil Procedure Code. The fact that the sale did not take place at the premises advertised was brought to the notice of the Court by an amended petition filed after 30 days had lapsed. There is a distinction between irregularities and illegalities. Only material irregularities need be notified to Court within 30 days of the receipt in Court of the Fiscal's report. The failure to hold the sale at the advertised spot was an illegality which need not be notified to Court within 30 days mentioned in Section 282 (2) — See *Jayarama Aiyar v. Vridhugiri*¹, *Akshaya Pillai v. Govindarajulu Chetti*², *Pannalal v. Firm Hasan Dada*³.

N. Kumarasingham, for 1st respondent.

C. Thiagalingam, Q.C., with *N. Kumarasingham* and *T. Parathalingam*, for 2nd respondent.—The provisions of Section 273 Civil Procedure Code are not imperative but directory. The fact that the sale was not held on the spot advertised for sale is an irregularity which should have been notified to Court within 30 days as provided for in Section 282 (2) Civil Procedure Code. "Irregularity" includes an "illegality". See *Tassaduk Rasul Khan v. Ahmed Hussain*⁴, *Shoodhyan v. Bholnath*⁵, *Firm Tirku Ram Chuni Lal v. Fakhir Ahmed*⁶.

Cur. adv. vult.

May 2, 1956. BASNAYAKE, C.J.—

This is an appeal from an order under section 282 (2) of the Civil Procedure Code refusing to set aside the sale by the Fiscal of an estate known as Arawa Estate in execution of a decree in favour of the respondents.

It would appear that there was a mortgage decree for the sale of two estates, one known as Uva Estate and the other as Arawa Estate. The sale of both estates was advertised on the same day. After the sale of Uva Estate the Fiscal and his officers proceeded to Arawa Estate which was about 4 miles away.

The sale had been fixed for 2 p.m. on August 9th but the Fiscal and his officers appear to have arrived there earlier and held the sale at 1.45 p.m. Although the *Gazette* notice stated that Arawa Estate consisted of three blocks which adjoin each other it is in fact not so. The three blocks are not adjacent, the smallest of them being far away from the other two and the two larger blocks being close to each other but not adjoining.

The only point urged by learned Counsel for the appellants is that the sale was not held at the spot as required by section 273 of the Civil Procedure Code. Admittedly the sale was held at a place known as the Factory Block, which was 636 feet away from the nearest of the blocks advertised for sale, where the rubber factory of the owners stood. The Fiscal's officer was under the impression that the Factory Block was also part of the property he was selling and was under an honest mistake as to the spot on which he was to sell the property. It is clear that the sale did not take place on any of the blocks of land which were advertised for sale.

¹ 1921 A. I. R. Madras 583 at 586.

² 1924 A. I. R. Madras 778.

³ 1939 A. I. R. Nagpur 258 at 260.

⁴ I. L. R. 21 Calcutta 66.

⁵ I. L. R. 21 Allahabad 311.

⁶ 1939 A. I. R. Lahore 36.

The question that we have to decide is whether the sale was conducted in accordance with the provisions of section 273 and if it was not whether the failure to do so is a material irregularity in conducting the sale within the meaning of section 282 (2) of the Civil Procedure Code.

Section 273 reads :—

“ In all cases the sale of immovable property shall be conducted on the spot, unless the court shall otherwise direct, or unless on application in writing to the Fiscal or his Deputy the parties shall consent to its being conducted elsewhere.”

Learned Counsel argues that the sale was not conducted on the spot, that “ on the spot ” means on the very land which is for sale, and that the failure to comply with section 273 of the Civil Procedure Code is an illegality and not an irregularity and that therefore section 282 (2) does not apply to it.

Section 282 (2) enables the decree holder, or any person whose immovable property has been sold or any person establishing to the satisfaction of the court an interest in property sold under a decree, to apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it.

The question is whether the expression “ irregularity ” in section 282 (2) of the Civil Procedure Code includes an illegality. I am of opinion that it does. “ Irregularity ” is a wide expression and includes an illegality. An act is said to be irregular when it does not conform to the principles, rules, or law by which it is governed.

It will be sufficient for the purpose of this case to state that the sale conducted on the Factory Block which was owned by the defendants to this action, though in close proximity to two out of the three blocks of land to be sold, was not a sale “ conducted on the spot ”. But the failure to comply with the provisions of section 273 on the part of the Fiscal is an irregularity within the meaning of section 282 (2) and the Court was right in not setting aside the sale on the ground of that irregularity as the applicant had not proved to its satisfaction that he had sustained substantial injury by reason of that irregularity.

Furthermore under sub-section (2) of section 282 a person who seeks to have a sale set aside on the ground of material irregularity should notify the Court of the irregularity of which he complains within 30 days of the receipt of the Fiscal's report. In the instant case the complaint about the failure to comply with the provisions of section 273 was made after the period of 30 days and is therefore out of time and the Court has no power to act on such a complaint.

The appellant is not entitled to succeed and the appeal is dismissed with costs.

K. D. DE SILVA, J.—I agree.

Appeal dismissed.