1957   *Pr sent :*   **Weerasooriya, J., and Sansoni, J.**

KANAKASABAI, Appellant, *and* CADER, Respondent

S. C. 39—D. C. (Inty.) Matale, 210/M.B.

Mortgage Act, No. 6 of 1949—Sections 49, 50 (4), 61 (1)—Hypothecary sale—Applica-
tion to set it aside.for material irregularity—Power of Court to hear objections—
Civil Procedure Code, s. 282 (2).

> Where mortgaged land is directed to be sold by the Fiscal without being
> previously seized as provided in section 49 of the Mortgage Act, and application
> is subsequently made to set aside the sale when it has taken place, section 282(2)
> of the Civil Procedure Code is applicable by virtue of section 61(1) of the Mort-
> gage Act and precludes the Court from inquiring into any objections not notified
> to Court within 30 days of the receipt of the Fiscal's report relating to the sale.

APPEAL from an order of the District Court, Matale.

S. B. Yatawara, for plaintiff-appellant.

P. Somatilakam, with *V. J. Martyn,* for defendant-respondent.

Cur. adv. vult.

September 19, 1957.   WEERASOORIYA, J.—

This is an appeal by the plaintiff from an order of the District Judge of
Matale setting aside a sale held in execution of the decree entered in the
case.   The property sold was that mortgaged with the plaintiff on the
two bonds sued upon, and the sale was subject to two earlier bonds,
also in favour of the plaintiff, for securing other loans of Rs. 13,000 and
Rs. 1,000 respectively on, which, according to the evidence given by
the plaintiff, interest had accrued to the amount of Rs. 7,000 at the time
of the filing of the present action.

The only substantial ground of objection to the sale specified in the
application to have it set aside was that the sale had not been duly
advertised.   But at the inquiry held into the application counsel for
the defendant proceeded to raise various other objections to the sale
despite the submission of the plaintiff's proctor that the defendant was,
as a matter of law, restricted to the particular objections specified in his
application.   One of the new objections raised was the alleged non-
compliance with the provisions of section 50 (4) of the Mortgage Act,
No. 6 of 1949, which require that the person conducting the sale shall
first put up the land for sale at the current market value of the land
as appraised by him or by the Court, as the case may be ; and it was only
on this ground that the learned District Judge made the order setting
aside the sale.

As the mortgaged land had in this case been directed to be sold by the Fiscal without being previously seized as provided by section 49 of the Mortgage Act, section 282 (*inter alia*) of the Civil Procedure Code applied to the sale by virtue of section 61 (1) of the Mortgâge Act. It was necessary, therefore, as required by section 282 (2) of the Civil Procedure Code, that the grounds of objection to the sale should be notified to Court within thirty days of the receipt of the Fiscal's report relating to the sale, and the Court was precluded from inquiring into any objection not so notified. This alone would, in my opinion, be sufficient reason for setting aside the order appealed from. But even considering the objection on its merits all that could be urged is that the report of the officer who held the sale did not specifically state that he first put up the land for sale at its appraised value. But he has given evidence at the inquiry that he duly did so and that there were no bidders at that figure. His evidence on the point has not been contradicted even by the defendant who himself gave evidence and said that he was present at the sale. Taking this evidence in conjunction with the omission to refer to this matter in the objections set out in the application for the sale to be set aside (and it is inconceivable that if the officer conducting the sale had been guilty of such a vital irregularity the objection would not have been taken at the first available opportunity) the probability appears to be that the land was put up for sale at the appraised value.

The order appealed from is set aside with costs in both Courts.

SANSONI, J.—I agree.

Order set aside.