1920.

Present : Bertram C.J. and Schneider A.J.

ARUNACHALAM CHETTY *v.* HAMDOON *et al.*

43—D. C. (Inty.) Colombo, 127,901.

Civil Procedure Code, ss. 262 and 284—Default of payment of purchase money—Re-sale of property—Application by first purchaser to set aside sale on the ground that the debtor had no interest.

A deposit which a purchaser at a Fiscal's sale had made was forfeited as he made default in payment of the balance, and the property was re-sold. She subsequently applied to Court under section 284 of the Civil Procedure Code, having discovered that the judgment-debtor had no interest in the property, which purported to be sold, and asked that the Court should set aside the sale, and that the amount she had already paid by way of deposit should be returned to her.

Held, that she was not entitled to the return of the money, and that there was no sale in existence to set aside.

THE facts appear from the judgment.

A. St. V. Jayawardene, for the appellant.

H. J. C. Pereira (with him *L. M. de Silva*), for the respondents.

August 2, 1920. BERTRAM C.J.—

In this case the appellant, who is the purchaser at a Fiscal's sale, made default in the payment of the balance of the purchase money, and, in consequence, under section 262 of the Civil Procedure Code, the deposit which she had made was forfeited to the judgment-creditor, and the property was re-sold. She subsequently applied to the Court under section 284, having discovered that the judgment-debtor had no interest in the property which purported to be sold, and asked that the Court should set aside the sale, and that the amount she had already paid by way of deposit should be returned to her. I regret that I do not see that the Court can afford her any relief. Section 284 only allows her to apply to set aside a sale. But by her own default under section 262 the sale seems to me to have been set aside already. There is, consequently, no sale in existence to set aside. I am unable to see, therefore, how section 284 can apply to the case. The result is undoubtedly peculiar. The money is forfeited to the judgment-creditor. If there is a subsequent sale, and the amount realized by that sale, together with the forfeited deposit, exceeds the amount of the judgment debt, the balance is paid to the judgment-debtor. In any case, the forfeiture of the deposit works out to the advantage of the judgment-debtor. If it transpires that he had no saleable interest in the property, then I imagine there can be no effective subsequent sale, but the deposit has nevertheless been, by the words of section 262, forfeited to the judgment-creditor. The judgment-debtor thus receives an advantage through the sale of a property which never belonged to him. That certainly is a peculiar result. But it does not enable us to construe section 284 as applying to circumstances which are clearly outside its terms.

Mr. Jayawardene has raised the further point that, before the deposit was forfeited by section 262, the appellant should have had an opportunity of being heard on the general ground that no one should be deprived of money or property which belongs to him unless he has had an opportunity of stating his case. It is not necessary for us to decide whether this principle applies to a forfeiture under section 262, because, even if the appellant has been called upon to show cause why the deposit should not be forfeited at the expiration of the thirty days, I do not see that she could possibly have had any good cause to show. If she refrained from paying the deposit, because she had discovered the absence of a saleable interest, she ought to have taken action within thirty days. I do not see, therefore, that the absence of an opportunity of being heard can in any way have prejudiced her in the matter now in dispute. I am, therefore, of opinion that the appeal must be dismissed, with costs.

SCHNEIDER A.J.—I agree.

Appeal dismissed.