

Present: Bertram C.J. and De Sampayo J.

1918.

PERIS *v.* SILVA.

93—D. C. Galle, 15,115

Civil Procedure Code, ss. 201, 284, and 344—Mortgage decree—Auction sale—Power of Court to set aside sale on the ground that debtor had no saleable interest.

It is not open to a purchaser at an auction sale, held under a mortgage decree under section 201 of the Civil Procedure Code, to move the Court to set aside the sale on the ground that the defendant at the time of the sale had no saleable interest in the property.

"Section 344 of the Civil Procedure Code no doubt provides that all questions relating to the execution of the decree should be determined by the Court executing the decree, but I think these questions have regard only to procedure and the conduct of the parties concerned or of the officers entrusted with the duty of carrying out the seizure and sale. In my opinion such a question as the title of the execution-debtor to the property sold is outside the scope of section 344."

Section 284 is concerned with ordinary Fiscal's sales only.

THE facts appear from the judgment.

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

Zoysa, for plaintiff, respondent.

J. S. Jayawardene, for defendant, respondent.

November 12, 1918. DE SAMPAYO J.—

The application, from the refusal of which this appeal is taken, is quite novel, and no express provision of the law or any judicial precedent can be cited in support of it. The plaintiff obtained a mortgage decree against the defendant, whereby the Court, under section 201 of the Civil Procedure Code, ordered that the mortgaged land be sold by public auction, and a commission was issued to Mr. W. D. de Silva, auctioneer, to carry out the sale. On October 6, 1917, the sale took place under conditions of sale approved by the Court, and the appellant became purchaser for the sum of Rs. 2,315. The appellant as purchaser paid down one-tenth of the purchase money in accordance with the conditions of sale, and agreed to pay the balance on November 6, 1917. The conditions of sale provided that if this balance was not duly paid, the deposit should be thereupon forfeited to the plaintiff, who was to be at liberty either to enforce the sale, or to re-sell the property at the risk of the purchaser. The appellant having failed to pay the balance purchase money as agreed, the plaintiff chose the latter alternative, and the Court on

1918.
 DE SAMPAYO
 J.
 Paris v.
 Silva

November 28, 1917, at the instance of the plaintiff, ordered a re-sale, and authority in that behalf was given to the same auctioneer. This re-sale took place on December 22, 1917, and the auctioneer reported the same to Court on December 29, 1917. In the meantime, on December 6, 1917, the appellant applied to Court by petition to set aside the first sale, and to refund to him the deposit, on the ground that the defendant at the time of the sale had no saleable interest in the property. The District Judge refused this application, and the appeal is from that order.

The District Judge has expressed the opinion that the sale having lapsed on the failure of the appellant duly to pay the balance purchase money, and a re-sale having been ordered, the appellant was not entitled to assert his rights as a purchaser and to make the application. This reasoning appears to me to be sound, but the more serious and important question, which has been argued at length before us, is whether the appellant, even if he was not in default, is entitled to a rescission of the sale on the specific ground on which he bases his application. I think that this question has been rightly answered in the negative by the District Judge. Section 344 of the Civil Procedure Code, which has been invoked, no doubt provides that all questions relating to the execution of the decree should be determined by the Court executing the decree; but I think these questions have regard only to procedure and the conduct of the parties concerned or of the officers entrusted with the duty of carrying out the seizure and sale. In my opinion such a question as the title of the execution-debtor to the property sold is outside the scope of section 344. The appellant's counsel also referred to section 284 of the Code as authorizing the Court to set aside a sale on the ground that the execution-debtor had no saleable interest, whether the sale be effected under a writ in the ordinary course of execution, or in pursuance of a special order under section 201 for the sale of mortgaged property. This interpretation is inadmissible, for it is clear, from the context and language of section 284 itself, that it is concerned with the ordinary Fiscal's sales only. The result, so far as the Civil Procedure Code is concerned, is that a sale of mortgaged property under section 201 cannot be set aside for want of title in the mortgagor by summary application to Court. It is not necessary here to decide whether a separate action is available for that purpose. I need only say that, with regard to judicial sales, the general principle is *caveat emptor*, and unless it can be clearly shown that the law has provided otherwise, it is not possible to supply the omission by straining the provisions of the Code and applying them to cases not contemplated therein.

In my opinion the appeal fails, and should be dismissed, with costs.

BERTRAM C.J.—I agree.

Appeal dismissed.