

Present : Lascelles C.J. and Wood Renton J.

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23—D. (Trincomalee, 389).

Civil Procedure Code, ss. 272, 282, 283, and 265—Decree-holder may bid for or purchase property only with the sanction of Court—Court may impose terms—Irregularity in conducting sale—Objection to sale must be made within thirty days.

A decree-holder may only bid for or purchase the property at the execution sale with the previous sanction of the Court, and subject to such terms as the Court may impose.

Sections 282 and 283 of the Civil Procedure Code require that the grounds of each irregularity on which a person desiring to set aside a sale relies should be expressly notified to the Court within the period of thirty days contemplated by the sections, and the Court has no power to set aside (whatever hardship the particular circumstances of the case may disclose) any sale on the ground of an irregularity which has not been so notified.

Where the Fiscal ignored the condition imposed by the Court, directing that no bid be accepted from the decree-holder below the appraised value, and sold the property to the decree holder at a mere fraction of the appraised value—

Held, that there was an irregularity in the conducting of the sale within the meaning of section 282.

Held, further, that as the sale was not impeached on the ground of this irregularity within the period prescribed by section 282, the objection came too late.

Section 265 expressly empowers the Fiscal, before accepting any bid at a sale in execution, to satisfy himself as to the *bona fides* of the bidder and his ability to pay down the amount of the deposit required.

A person seeking to set aside a Fiscal's sale on the ground of material irregularity must lead direct evidence to prove that the sale of the property at an under-value was due to the irregularity; the mere allegation of inadequacy of price, without proof that it was the effect of the irregularity on the ground on which the sale is impeached, is not sufficient evidence of substantial damage caused by such irregularity.

IN this case there were two appeals. The appellant moved, under section 282 of the Civil Procedure Code, to set aside the sale of a land belonging to him in execution of the respondent's writ. In the petition by which, in conformity with the provisions of section 282 of the Code, that application was brought before the Court, the only ground of irregularity alleged was that there had been no publication of the sale in a certain village; that several intended purchasers had had no notice of it; and that in

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consequence of this there were no bidders, and the sale was concluded on the solitary bid of the respondent, the appellant's judgment-creditor for Rs. 100.

The District Judge refused to set aside the sale. The judgment-debtor appealed. On November 30, 1911, the Supreme Court (Wood Renton and Grenier JJ.) affirmed the judgment of the lower Court by the following judgment, but without prejudice to the right, if any, of the appellant to object to the confirmation of the sale on the ground that the decree-holder had bought the property, in contravention of the order of Court, for a sum below the appraised value.

WOOD RENTON J.—His Lordship set out the facts, and continued:—

The appraised value of the land is Rs. 2,510, and there is, I think, every reason to regard the present case as one of great hardship to the appellant. At the inquiry into the appellant's petition no direct evidence was led showing that the absence of bidders and the sale of the land for Rs. 100 were due to the irregularity in regard to the publication. It follows from the case of *Silva v. Dias*,¹ a decision of two Judges, which is binding upon us, and which itself follows the decision of the Privy Council in *MacNaghten v. Pershad Singh*,² that the sale here in question cannot be set aside on the only ground of irregularity alleged in the petition. It was held in *Silva v. Dias*¹ that a person seeking to set aside a Fiscal's sale on the ground of material irregularity must lead direct evidence to prove that the sale of the property at an under-value was due to the irregularity, and that a mere allegation of inadequacy of price, without proof that it was the effect of the irregularity on the ground on which the sale is impeached, is not sufficient evidence of substantial damage caused by such irregularity. In his argument in support of the appeal, however, Mr. Bawa has relied on two additional alleged irregularities: in the first place, that the bid of a man Sabapathy, who offered an advance of Rs. 10 on the upset price of Rs. 2,510, was rejected by the Deputy Fiscal; and in the next place, that by the very terms of the order permitting the execution-creditor to bid, he had no right to acquire the property at less than its appraised value. Section 265 of the Civil Procedure Code expressly empowers the Fiscal, before accepting any bid at a sale in execution, to satisfy himself as to the *bona fides* of the bidder, and his ability to pay down the amount of the deposit required. The evidence in the present case shows that that condition was complied with, and that there were reasonable grounds for not regarding Sabapathy's bid as a serious one. But in addition to that fact, which is itself sufficient to dispose of the irregularity in question as a ground for setting aside the sale, it appears to me that the fact that this ground of alleged irregularity was not notified

¹ (1910) 13 N. L. R. 125.

² (1882) I. L. R. 9 Cal. 656.

to the Court within thirty days of the receipt of the Fiscal's report precludes us from taking account of it now. Sections 282 and 283 of the Civil Procedure Code, if they are read together, require, in my opinion—and the same view was taken *obiter* by Sir Charles Layard C.J. in the case of *Muttu Caruppen Chetty v. de Mel*¹—that the grounds of each irregularity on which the appellant relies should be expressly notified to the Court within the period of thirty days contemplated by the section, and the Court has no power to set aside (whatever hardship the particular circumstances of the case may disclose) any sale on the ground of an irregularity which has not been so notified. This omission is equally fatal to the second ground of additional alleged irregularity above referred to. There is good reason for the requirement that irregularities should be promptly notified to the Court dealing with applications of this kind, inasmuch as their determination frequently depends on *viva voce* evidence which can be led at the inquiry. The case of *Muttu Caruppen Chetty v. de Mel*¹ and the present case offer illustrations of that proposition. It might quite well be that, if the point had been taken in the appellant's original petition, the respondent might have been in a position, as was the judgment-debtor in the case of *Muttu Caruppen Chetty v. de Mel*,¹ to meet it by *viva voce* evidence. On the grounds that I have stated I would dismiss this appeal with costs, but without prejudice to the right, if any, of the appellant to object to the confirmation of the sale on the ground that, under the order of Court empowering the execution-creditor to bid, he was bound to accept the appraised value as the initial basis of his bidding. I would express no opinion as to whether such an objection, if taken, would be entitled to prevail.

GRENIER J.—I agree.

The judgment-debtor then moved that the sale be not confirmed, as the decree-holder had bought the property, in contravention of the order of Court, for a sum below the appraised value. The learned District Judge disallowed the motion. The judgment-debtor appealed.

Bawa, K.C., for the appellant.—The decree-holder applied for sanction of Court to bid for and purchase the property to be sold in execution and to obtain credit for the purchase amount to the extent of his claim. The Court granted the sanction, subject to the proviso that the bidding was to commence at the appraised value, and that no bid below the amount was to be accepted. The Deputy Fiscal did not comply with the requirements of the order of Court, though he was aware of the order, and permitted the judgment-creditor to bid for and purchase the property for a sum much below the appraised value. The sale is therefore had, and should not be confirmed.

¹ (1902-3) 6 N. L. R. 239 and 241.

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The words of the section of the Indian Code corresponding to section 272 of our Code are: "No holder of a decree . . . shall, without the express permission of the Court, bid for or purchase the property . . ." Our section (272), though expressed differently, must be interpreted to mean the same. Under our section a decree-holder "may, with the previous sanction of and subject to such terms as to credit . . . and otherwise as may be imposed by the Court, bid for or purchase the property." It is clear that under our section the judgment-creditor may not bid for or purchase property without the sanction of Court, and that the Court may, when it gives the creditor sanction to bid, impose any conditions.

The District Judge was wrong in relying on the practice at Trincomalee, as the custom on which he relies has the effect of over-riding the provisions of section 272.

Counsel relied on *Piloris v. Don Bastian*.¹

Sampayo, K.C. (with him *Balasingham*), for the respondent.—Before the Supreme Court decided the first appeal the District Judge had confirmed the sale, as the appellant, though noticed, did not show any reasons to the contrary. It is now too late for the appellant to move that the sale be not confirmed. The Supreme Court was not aware that the sale was confirmed when it delivered its judgment of November 30, 1911.

*Silva v. Uparis*² is a direct authority for the proposition that section 272 of the Civil Procedure Code does not forbid an execution-creditor from purchasing without the sanction of the Court. It is only when the judgment-creditor wants credit that he should obtain the sanction of Court.

The judgment-creditor in this case did not ask for credit from the Fiscal. The Fiscal was, therefore, right in selling the property to the judgment creditor for a sum below the appraised value.

The District Judge of Trincomalee is the most competent person to interpret the orders of his Court. He holds that the order of the Court, permitting the creditor to purchase the property at the appraised value, only refers to the case of the creditor asking for credit from the Fiscal. That is the practice at Trincomalee as shown by numerous records.

The objection was not raised within thirty days, and it is now too late.

Bawa, K.C., in reply.—The District Judge had no right to confirm the sale after the filing of the appeal. *De Mel v. Dharmaratne*.³

The sale is a nullity, as the orders of the Court were ignored. The non-observance of the order of Court is not a mere irregularity which should be notified to Court within thirty days.

Cur. adv. vult.

¹ (1893) 3 C. L. R. 75 (footnote).

² (1894) 3 C. L. R. 75.

³ (1903) 7 N. L. R. 274.

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I entirely concur in the judgment of my brother Wood Renton, though I much regret that we are precluded by sections 282 and 283 of the Civil Procedure Code from setting aside this sale, which was carried out in flagrant violation of the order of the Court. Notwithstanding the judgment of this Court in *Silva v. Uparis*,¹ I am clearly of opinion that section 272 of the Civil Procedure Code must be construed to mean what it says, namely, that the decree-holder may only bid for or purchase the property with the previous sanction of the Court, and subject to such terms as the Court may impose. The language of the section is too clear to admit of any other interpretation, and the provisions of the section which empower the Court to impose terms are in themselves reasonable and useful.

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I entirely concur in the observations of my brother with regard to the personal responsibility of an officer of the Court who disregards specific orders of the Court, as the Deputy Fiscal has done in this case.

WOOD RENTON J.—

This case came before Mr. Justice Grenier and myself on November 30, 1911. The appellant moved under section 282 of the Civil Procedure Code to set aside the sale of a land belonging to him in execution of the respondent's writ, on the ground that there had been no publication of the sale in a certain village; that several intending purchasers had no notice of it; and that in consequence of this there were no bidders, and the sale was concluded on the solitary bid of the respondent, the appellant's judgment-creditor, for Rs. 100, while the appraised value of the land was Rs. 2,500. The learned District Judge dismissed the motion, and my brother Grenier and I affirmed his decision in appeal, without prejudice, however, to the right, if any, of the appellant to object to the confirmation of the sale on the ground that under an order of Court empowering the execution-creditor to bid he was bound to accept the appraised value as the initial basis of his bidding. It was not brought to our notice at the argument of the appeal that after the petition of appeal had been presented, but before the date of the argument, the sale had in fact been confirmed by the District Judge under section 282 of the Civil Procedure Code. It appears from the record that the sale was confirmed by an order made *inter partes*. The learned District Judge says, in the order confirming it, "no reasons to the contrary having been adduced, this sale is hereby confirmed". The fact that the appellant offered no objection to the confirmation of the sale must be taken account of in considering his present claim to have the confirmation of the sale set aside.

¹ (1894) 3 C. L. R. 75.

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The proctor for the plaintiff-appellant, who is the execution-creditor, moved in the proceedings "for the sanction of the Court for his client to bid for and purchase the property to be sold in execution, and to obtain credit for the purchase amount to the extent of his claim," provided there were no competing execution-creditors. This motion was allowed, subject to the proviso that the bidding was to commence at the appraised value, and that no bid below that amount was to be accepted. The terms of this order were communicated by the Secretary of the District Court to the Deputy Fiscal. The order of the Court, however, was disobeyed at the sale. The respondent's motion and the terms of the order itself show clearly that the sanction of the Court was asked, not only to the respondent's obtaining credit for the purchase amount to the extent of his claim, but also to his bidding for and purchasing the property itself. The Deputy Fiscal, who conducted the sale, was aware of the order which the Court had made. He did not, however, comply with its requirements. The property was not put up for sale at the appraised value, and the respondent was allowed to purchase it for a mere fraction of that value. This open disobedience of the order of the Court has been defended on the ground that it has not been the practice in Trincomalee to carry out such orders, except where credit is asked for. The respondent in the present case did not produce the credit order on the date of the sale, nor did he apply for credit. Apart from judicial decisions, the meaning of section 272 of the Civil Procedure Code, under which the respondent's application for the sanction of the Court was made presents to my mind no difficulty.

"A holder", says that section, "of a decree in execution of which property is sold may, with the previous sanction of and subject to such terms as to credit being given him by the Fiscal, and otherwise as may be imposed by the Court, bid for or purchase the property."

In my opinion the meaning of this enactment is that the holder of a decree in execution can only bid for or purchase property sold under that decree with the previous sanction of the Court, and subject to any conditions, whether as to credit or otherwise, that the Court may impose. I am quite unable to adopt the view taken by Lawrie J. in *Silva v. Uparis*¹ that section 272 of the Civil Procedure Code does not expressly forbid an execution creditor from purchasing without the sanction of the Court. Lawrie J. sought to justify this interpretation of the section by reference to the Roman-Dutch law and to the practice prior to the enactment of the Code of Civil Procedure. With the greatest respect, I would point out that we are now concerned only with the language of section 272 itself. It seems to me to be entirely unambiguous. I would hold that the order made by the Court on the respondent's motion for its sanction was an order made under section 272; that

¹ (1894) 3 C. L. R. 75.

it was binding alike on the respondent and on the Deputy Fiscal; and that no practice of the District Court of Trincomalee could justify a Deputy Fiscal in disregarding it. I desire to point out as emphatically as possible that officers of Court who fail to comply with such orders, in reliance upon such a practice as was set up in the present case, are assuming a very serious personal responsibility.

Although it may no doubt be argued that the failure of the Deputy Fiscal to carry out the sale in accordance with the orders of the Court made the sale itself a nullity, it still, I think, amounted to an irregularity in conducting the sale within the meaning of section 282 of the Civil Procedure Code. If this view is correct, the appellant is not entitled to rely on it now, inasmuch as he did not impeach the sale on that ground within the period prescribed by section 282 of the Code. Under section 283 of the Code of Civil Procedure, where an application under section 282 to set aside a sale has either not been duly made or has been disallowed, the Court is required, on the application of the decree-holder or of the purchaser, to pass an order confirming the sale, as regards the parties to the suit and the purchaser, unless it is proved that the judgment debt was satisfied at the time the writ of execution issued. On no other ground can an order confirming a sale under chapter XXII. of the Civil Procedure Code be opposed under the Code. Under section 284 the sale when confirmed may be set aside on the ground that the person whose property purported to be sold had no salable interest therein. Here, again, no other ground for setting aside a sale under chapter XXII. that has been duly confirmed is prescribed. It was held both by the Privy Council (see *Sillery v. Harmanis*¹) and by this Court (see *Sinnetampi v. Kandapodi*²) that an order made under section 53 of "The Fiscals' Ordinance, 1867", confirming or disallowing a sale in execution, is a final order. Subject to the proviso contained in it, I think that the same interpretation must be placed on section 284 of the Code of Civil Procedure. We are not concerned in the present case with sales effected under other provisions of the law than chapter XXII. of the Code of Civil Procedure.

The appellant's counsel argued that in any case the District Judge had no right to confirm the sale pending an appeal. Here the order of confirmation was made after the presentation of the petition of appeal, but before the hearing of the appeal itself. This circumstance differentiates this case from *De Mel v. Dharmaratne*³, where the sale, although confirmed, was set aside on the ground that before confirmation the Supreme Court had reversed in appeal the decree in pursuance of which execution had issued and the sale had taken place. But I do not think that it is necessary to deal with this point further, for, as I have already shown, the order of

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¹ (1882) 8 A. C. 99.² (1839) 9 S. C. C. 9.³ (1903) 7 N. L. R. 274.

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confirmation was made *inter partes*, and without any cause against it having been shown by the appellant. The construction that this judgment places on sections 282 and 283 of the Civil Procedure Code may involve hardship in particular cases. But I think that it is in law a correct interpretation of those sections, and that it is sound in principle also. If the view were to be sanctioned that parties dissatisfied with sales in execution should be free to attack on any ground of statutory objection, not only a sale itself, but also the confirmation of that sale, proceedings of this character would be conducted piecemeal, with a great increase of delay and expense to suitors. There is nothing unreasonable in the law providing that all the objections to a sale in execution, except those as to which it makes special provision, shall be taken under section 292 of the Code, and that, when once a sale has run the gauntlet of such objections, it shall be confirmed as a matter of course, subject to the provisions in sections 283 and 284 of the Code. As I have already pointed out, we are concerned here only with sales under chapter XXII. of that Code, and with grounds of statutory objection to such sales. I would dismiss the appeal with costs.

Appeal dismissed.

