Present : Dalton and Akbar JJ.

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217—D. C. (Inty.) Kandy , 34,664.

Fiscal's sale—Lands worth more than one thousand rupees—Advertisement in " Government Gazette "—Material irregularity—Inadequacy of price—Proof injury—Civil Procedure Code, ss. 156 and 282.

Where lands worth more than one thousand rupees were sold at a Fiscal's sale, without being advertised in the *Government Gazette* as required by section 256 of the Civil Procedure Code,—

Held, that the sale cannot be set aside under section 282 of the Civil Procedure Code without proof that the alleged damage caused to the judgment-debtor, viz., the inadequacy of the price realized, was due to non-publication in the *Government Gazette*.

Per AKBAR J.—Where several lands are sold under a writ, it is the aggregate value of the lands sold at the same time which has to be taken into consideration for the purpose of section 256.

THIS was an application to set aside a sale under section 282 of the Civil Procedure Code on the ground of a material irregularity in publishing it. The irregularity alleged was that the sale was not published in the *Government Gazette* as required by section 256 of the Civil Procedure Code. The property, which consisted of an undivided half share of three lands, was sold for Rs. 748·50 to the appellant. The learned District Judge held that the inadequate price realized at the sale was due to the failure to advertise in the *Government Gazette* and set aside the sale.

N. E. Weerasooria, for appellant.

H. E. Garvin, for respondent.

February 13, 1929. DALTON J.—

This appeal arises out of an application to set aside a sale under the provisions of section 282 of the Civil Procedure Code on the ground of a material irregularity in publishing it. In support of the application it was urged first that the property, one undivided half share in three fields, was over Rs. 1,000 in value, and secondly, that the sale was not advertised in the *Government Gazette* as required by section 256 of the Code, whereby the applicant had suffered substantial injury. Further irregularities, that copies of notices were not posted as required and notice was not given by beating of tom-tom, one gathers from the judgment, were not pressed in the lower Court, applicant resting her case on the first two issues. The evidence also of the Fiscal's officer that he duly observed the provisions of

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section 255 as regards the beating of tom-toms and the posting of the notices of sale was apparently accepted in the lower Court. The two issues were answered in favour of the applicant and the sale was set aside. The purchaser, respondent to the application, now appeals.

The evidence shows that the Fiscal's valuation of the property was Rs. 850. The Fiscal's officer gave evidence stating how he arrived at that valuation. The applicant herself, as administratrix of her deceased husband, valued the property for the calculation of estate duty at Rs. 1,050, which valuation appears to have been increased by the Commissioner of Stamps to Rs. 1,300. It is hardly likely that her valuation for the purpose of estate duty was an under-estimate, but in her present application before the Court her valuation is Rs. 2,000, which is obviously excessive. All the necessary facts to help the Court have not been brought out and the case has been starved of evidence, but all these estimates would seem to have been made in a short space of time. On January 24, 1928, the property was sold to the present appellant for the sum of Rs. 748·50. Having regard to the fact that it was a forced sale, when good prices are seldom obtained, taking the valuation of the Commissioner of Stamps as fairly accurately setting out the value, that was not an unduly low price to obtain. The learned trial Judge, however, upon the evidence before him, has come to the conclusion that the property was worth over Rs. 1,000 at the time it was seized. In spite of the Fiscal's valuation, I think the evidence supports his conclusion. The sale should, therefore, have been advertised in the *Gazette*. It is admitted that that was not done. This question then has to be answered. Is this such a material irregularity in publishing the sale as to entitle the Court to set aside the sale ? To answer that question one has to ascertain whether the applicant proved that she had sustained substantial injury by reason of such irregularity. As I stated above, the evidence in the lower Court is of the most meagre description. The only witness to support the application is the applicant herself. She nowhere suggests that the failure to advertise in the *Gazette* was directly or indirectly the cause of the property at the sale fetching only Rs. 748·50. Very shortly after this sale, however, she had the property put up for sale again in the testamentary proceedings in terms of an order of the Court, and on March 6, 1928, it was sold by public auction, fetching in all Rs. 1,525. The purchaser of one field was her second husband Ranna, and the purchaser of another field was Ranna's nephew. When the Court made this later order to sell, one may reasonably infer that it acted in ignorance of the judicial sale that had taken place less than six weeks before. It was obviously the duty of applicant to have brought it to the notice of the Court in the testamentary proceedings.

The trial Judge has come to the conclusion that the inadequate price fetched at the first sale was due to the irregularity pleaded, namely, the failure to advertise in the *Gazette*. He states he is entitled to infer this because at the subsequent sale the properties realized more than twice the price realized at the Fiscal's sale. But there is no evidence to show that the second sale was advertised in the *Gazette*. The learned Judge states that he has no doubt it was duly advertised and all publicity given to it because of the price obtained, but there is no evidence at all to support the conclusion that the enhanced price was due to something being done on the occasion of the second sale which was omitted at the first sale. Applicant was not ignorant of the date of the first sale. It would have been interesting to have had Ranna in the witness box, but one does not know whether he was present at, or bid at, that sale. There is little doubt that as husband of the applicant, he must have known of it.

The substantial injury is the alleged inadequate price. This Court has previously held on more than one occasion that inadequacy of price was not of itself evidence of substantial damage caused by the irregularity. There is, in addition, here admittedly no direct evidence of the connection between the irregularity, that is, the failure to advertise in the *Gazette*, and the injury. But one can go further than that in the interests of the applicant (*Koelman v. Amarasekere*[1]). Is the injury one which may be reasonably and logically inferred to be the natural consequence of the irregularity ? To me, it seems, the answer is " no." As de Sampayo J. with all his long experience pointed out in *Mootu Tamby v. Jayaman*,[2] the class of persons who are likely to bid for village land are not those who ordinarily read the *Government Gazette*. The piece of land in question in that case was valued at Rs. 400 and sold for Rs. 260. Advertisement in the *Gazette* was not therefore necessary, but the learned Judge above named expressed the opinion that the non-publication of the sale of a bit of village land, a planted garden, in the *Gazette* cannot reasonably be said to have affected the price realized at the sale. That expression of opinion seems to me to be fully applicable to the case before us, and I am quite unable to see that the alleged inadequate price can be reasonably or logically inferred as being the natural consequence of the irregularity. Applicant has not sought to go beyond trying to establish that conclusion, and in my opinion the trial Judge had nothing before him entitling him to answer the second issue in her favour. In the result, therefore, her application should have been dismissed.

The order of the trial Judge must, therefore, be set aside with costs and the appeal allowed with costs.

[1] *23 N. L. R. 327.* [2] *2 C. W. R. 247.*

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The appellant was the purchaser of certain undivided shares belonging to his judgment-debtor, which were sold on a writ issued at his instance by the Fiscal. The appellant bought these undivided shares for the sum of Rs. 748·50. The respondent, who is the administratrix of the estate of the judgment-debtor, applied to set aside this sale under section 282 of the Civil Procedure Code on the ground that there was a material irregularity in the publishing and the conducting of the sale.

The parties went to trial on four issues, and it was admitted that the sale was not advertised in the *Government Gazette*. The District Judge has upheld the applicant's contention and ordered the sale to be set aside. It is quite clear from the proceedings that the main ground put forward by the applicant, and upheld by the District Judge, was that the lands were over Rs. 1,000 in value, and that it was an irregularity that the sale was not advertised in the *Gazette* as required by section 256. The District Judge held that the lands in questions (which had been valued at Rs. 1,050 for the purposes of the testamentary case and had been subsequently valued by the Commissioner of Stamps at Rs. 1,300) were sold in the testamentary case of the deceased judgment-debtor by public auction and had fetched Rs. 1,525. There is nothing in the record to show the circumstances under which this sale was ordered in the testamentary case, when the land, the subject-matter of the sale, had already been sold by the Fiscal to the judgment-creditor, who is the appellant now.

The first point taken by Mr. Weerasooria was that, although the three lands were seized under one writ and were sold at one and the same time, section 256 of the Civil Procedure Code, which prescribes the necessity of publishing the sale in the *Government Gazette* when the lands sold under a writ are valued at more than Rs. 1,000, only applied to the case of each land so seized, and that as each of the lands so seized in this case was less than Rs. 1,000 in value, it did not matter whether the aggregate value of the lands so seized was over Rs. 1,000 or not. He cited, as an authority in his favour, a case reported in *2 Ceylon Weekly Reporter, p. 247*. This case, I do not think, applies because there although the two lands were seized on one writ, yet the two sales took place at different times. I do not, therefore, think that the contention of the appellant's Counsel is entitled to succeed on this point, and the plain words of section 256 of the Civil Procedure Code must be given effect to, that is to say, it is the aggregate value of the lands put up for sale at one and the same time upon a writ which has to be taken into consideration.

The next point taken by him is, I think, entitled to succeed. His contention is that although the District Judge has found, as

a matter of fact, that the lands are over Rs. 1,000 in value, and that they only fetched half their proper value at the Fiscal's sale to the judgment-creditor, yet the terms of section 282 are imperative, namely, that no sale is to be set aside on the ground of a material irregularity unless an applicant proves to the satisfaction of the Court that he has suffered substantial injury by reason of the irregularity, and he quoted a case reported in *4 Ceylon Weekly Reporter, p. 388*, in support of his contention.

The District Judge admits that there is no proof that the under-value was due to the non-publication in the *Government Gazette*, but he has supported to give judgment on the authority of a case reported in *23 New Law Reports, p. 327*, in which it was held that direct evidence was only insisted upon when injury could not reasonably and logically be inferred to be the natural consequence of the irregularity. He has, therefore drawn this inference, namely, that the irregularity was the cause of the inadequate price. As observed by the Supreme Court in the case reported in *2 Ceylon Weekly Reporter, p. 247*, I do not think this inference can be drawn in this case. I do not see how the non-publication in the *Government Gazette*, which, as a matter of fact, is very rarely read by villagers, can have contributed to the under-value. As Mr. Justice de Sampayo said, " the non-publication of the sale, of the bit of village land in question in the *Government Gazette* cannot reasonably be said to have affected the price realized at the sale." In the absence of any such evidence I do not see how the applicant can succeed in an application under section 282 of the Civil Procedure Code.

Mr. Garvin, realizing the difficulty, tried to justify the District judge's judgment on the words of section 256 of the Civil Procedure Code, namely, that as no sale can take place until it has been advertised in the *Government Gazette*, the whole sale was void *ab initio*, and he cited a case reported in *9 New Law Reports, p. 150*. Mr. Garvin's argument places him on the horns of a dilemma. He had to admit that his application was under section 282, and that under section 282 it was necessary to connect the under-value with the non-publication in the *Government Gazette*. If so, his present application under that very section is bound to fail. Apart from that, however, I do not think the case reported in 9 *New Law Reports, p. 150*, applies, because that was a sale under a writ which was under-stamped. Therefore, the foundation of the whole sale failed. In this case the writ was good, and although section 256 says that no sale of land, over Rs. 1,000 in value, is to take place unless it is advertised in the *Government Gazette*, yet section 256 must be read along with section 282 in order that one may find out what the effect of the non-publication is going to lead to. The case reported in *4 Ceylon Weekly Reporter, p. 388*, is an authority to this effect, and I see no reason why it should not be followed in this

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case. Mr. Garvin took one other point which was not raised at the inquiry in the lower Court, and on the authority reported in *Appeal Court Reports, Vol. 2, p. 123,* I must decline to enter into a discussion of this point.

It is true that Mr. Garvin quoted an old case from the Indian Law Reports (*Calcutta Law Reports, p. 466*) which seems to support his contention that no direct evidence is necessary to connect the low value with the non-publication and that the inference that the former was due to the latter can reasonably be drawn from the facts of that case. The Calcutta Court may have been right in the circumstances of the particular case, but, as stated there, each case must depend on its own particular facts. In my opinion no such inference can be drawn here.

I, therefore, hold that the District Judge is wrong in his judgment, and I would allow the appeal with costs.

Appeal allowed.