

*Present* : Fisher C.J. and Drieberg J.

1830

FERON *v.* ISMAIL LEBBE MARIKAR *et al.*

17—D. C. Galle, 25,033.

*Partition—Sale of property—Valuation by Commissioner—Notice of sale—Sanction of Court—Ordinance No. 10 of 1863, s. 8.*

Where a sale has been ordered under the Partition Ordinance, the Commissioner is bound to make a valuation of the property before notice of sale is given.

The form and contents and the mode of giving notice must be sanctioned by Court.

A sale may be set aside where the Commissioner has not followed the directions of the Court.

**A** PPEAL from an order of the District Judge of Galle.

*Weerasooria*, for first defendant, appellant.

*H. V. Perera*, for purchaser, respondent.

1930 March 25, 1930. FISHER C.J.—

FISHER C.J. In this case an action was brought for partition of a property which the learned Judge has found to be worth Rs. 3,000. In the result there was a decree for sale, and the property was sold for Rs. 250. An application was made to the Court by the appellant to set aside the sale which the learned Judge dismissed with regret. The question for our consideration is whether the provisions of section 8 of the Partition Ordinance, 1863, were complied with in carrying out the sale. It is argued that it was not complied with in two respects, the first being that the valuation was not made until after the notice of sale was given. This appears to be the case. The notice of sale was given in the *Government Gazette* of March 8, 1929, while the valuation was submitted for the approval of Court on March 21, 1929. This has been held by this Court to be an irregularity. In *Tilakasekere v. Misi Nona*,<sup>1</sup> Bertram C.J. said: "In the present case it appears that the Commissioner made the valuation after he had given notice. This is no doubt an irregularity." Secondly, it is said that the notice of sale is a matter which must be controlled by the Court, that is to say, it is not competent for a Commissioner to make his own arrangements as regards giving notice even if he comes to the Court to ratify them after the event; but that the Court itself must exercise its discretion in deciding in what way notice should be given. I think this contention is also correct. The words of section 8 are that a Commissioner shall "give notice of not less than six weeks in such manner as the Court shall direct and as shall appear best calculated for giving the greatest publicity thereto . . . ." These words indicate that the form and contents and mode of giving the notice must be ordered by the Court, and that a sale may be set aside if the Commissioner does not act in accordance with the directions of the Court.

In the above two respects, therefore, in my opinion section 8 has not been complied with. Having regard to the price realized by the sale in relation to the value of the property, I do not think there was any need for express evidence to show that the appellant suffered damage under the irregularities. In my opinion it must be inferred.

The appeal will, therefore, be allowed, the sale will be set aside, and the matter will be remitted to the District Court for the sale to be carried out in accordance with the provisions of the Ordinance. The respondents will pay the costs of the appeal and of the hearing of the application in the Court below.

DRIEBERG J.—I agree.

*Appeal allowed.*