

1922.

Present : De Sampayo and Schneider JJ.

SAMARANAYAKE v. DISSANAYAKE.

27—D. C. Galle, 18,951.

Leave given to mortgage decree-holder to bid and buy property subject to condition that he was not to bid less than the appraised value—Purchase by a third party for decree-holder at less than appraised value—Action by decree-holder against purchaser for transfer—Fraud and collusion.

Plaintiff, a mortgage decree-holder, who had obtained leave of Court to buy the mortgaged property at the sale under his decree, subject to the condition that he was not to bid less than the appraised value, arranged with the defendant to bid for him. The defendant purchased the property at less than the appraised value with plaintiff's money. Plaintiff sued defendant for a transfer of the property.

Held, that plaintiff was entitled to a transfer.

Evasion by a plaintiff of section 272 of the Civil Procedure Code, or of the conditions imposed by the Court with regard to his purchasing at a Fiscal's sale, is a mere irregularity for which the sale may be liable to be set aside under section 282 on the application of the debtor, but the sale itself, when it is confirmed and a Fiscal transfer issued, is no longer to be considered invalid.

The defendant cannot resist the plaintiff's claim on the ground of fraud and collusion.

THE facts appear from the judgment.

Samarawickreme, for plaintiff, appellant.

Soertsz, for defendant, respondent.

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June 29, 1922. DE SAMPAYO J.—

*Samara-
nayake v.
Dissanayake*

This case involves a question of law, which, I think, has not been rightly decided by the District Judge. The plaintiff was the mortgagee of a certain land, and he obtained judgment on the mortgage in a previous case. When the property was to be sold by the Fiscal in execution of the decree, the plaintiff appears to have applied to the Court for leave to bid and buy the property. The Court gave leave, subject to the condition that he should not bid less than the appraised value. The plaintiff appears to have arranged with the defendant in this case to bid for him. Accordingly, the defendant bid and purchased at the sale at a price less than the appraised value. The plaintiff has brought the present action alleging that the plaintiff actually paid the purchase money, and the defendant bought the property with his money for the plaintiff, and prays that the defendant be ordered to re-transfer the property to him. It has been held in two previous cases that evasion by a plaintiff of section 272 of the Civil Procedure Code, or the conditions imposed by the Court with regard to his purchasing at a Fiscal's sale, is a mere irregularity for which the sale may be liable to be set aside under section 282 on the application of the debtor, but that the sale itself, when it is confirmed and a Fiscal's transfer issued, is no longer to be considered invalid. These cases are *Silva v. Siyadoris*¹ and *Weeraman v. De Silva*,² but Mr. Soertz; for the defendant, contends that there still remains a question of law whether it is not fraud and collusion between the plaintiff and the defendant when the property was purchased at a less price than the appraised value by the defendant on behalf of the plaintiff. I am myself unable to follow the argument that the transaction amounted to fraud. The suggestion is that the execution-debtor was defrauded to the extent of the difference between the appraised value and the purchase price. The difference may be a loss if, in fact, the appraised value is absolutely correct, but I cannot see that when a person bids and purchases at a public sale like a Fiscal's sale it is a fraud of this kind when he purchases at a less price than the real value of the property. Consequently, I cannot agree that the defendant can rely on any circumstances of fraud in order to resist the plaintiff's case. If the plaintiff is able to establish the facts which he alleges in his plaint, I think the decision of the District Judge dismissing the action is erroneous.

I would, therefore, set it aside, and send the case back for trial on evidence in due course. The plaintiff, I think, is entitled to the costs of the day in the District Court and of this appeal.

SCHNEIDER J.—I agree.

Set aside.

¹ 1 C. W. R. 225.

² (1922) 22 N. L. R. 107.