

Present : Garvin and Jayewardene A.JJ.

1923.

NANDRISA *et al.* v. BASTIAN APPU *et al.*

115—D. C. Matara, 8,549.

Fiscal's sale—False report by officer conducting sale that appellants were purchasers—Subsequent complaint to Fiscal that respondents were highest bidders—Power of Court to confirm sale as if respondents were purchasers.

The Fiscal's Arachchi, who conducted the sale, reported to the Deputy Fiscal that the appellants were the purchasers. The Deputy Fiscal reported accordingly. Subsequently, complaint was made to the Deputy Fiscal that the respondents were the highest bidders at the sale. The Deputy Fiscal reported to Court that complaint was true, and that the Arachchi's report was false. The respondents petitioned to Court that they may be declared the purchasers. The District Judge after inquiry accepted respondents' complaint, and proceeded to confirm the sale as if it were a sale to the respondents. The Supreme Court set aside the sale, and directed that the property be resold.

“ Nowhere does the Code contemplate the substitution of another person for the person reported to be the purchaser and the confirmation of the sale with so important a modification.”

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THE facts are set out in the judgment.

E. W. Jayewardene, K.C. (with him *H. V. Perera*), for the appellants.

Weerasuriya, for the respondents.

October 15, 1923. GARVIN A.J.—

In pursuance of a writ of execution issued in this case, the Fiscal caused certain leasehold interests in several lands to be seized. In due course a sale was held and conducted by the Fiscal's Arachchi, who reported to his superior officer, the Deputy Fiscal, that three persons—Bastian Appu, Greedrick Appu, and Adrian, who are the appellants—were the purchasers. The Deputy Fiscal in making his return to the writ reported in the usual form that he had caused to be seized, and sold the property enumerated in the annexed list. An examination of the list discloses the names of Bastian, Greedrick, and Adrian as the purchasers. It would seem that shortly after the sale, complaint was made to the Deputy Fiscal that the respondents to this appeal were the persons who were the highest bidders at the sale, but that the Fiscal's Arachchi dishonestly substituted the names of the appellants as the purchasers. The Deputy Fiscal has made a note to this effect on the report which he sent in, to which he has added that after inquiry he had formed the opinion that the complaint was true and that the Arachchi's report false. In the result he reported that a sale had been held at which certain persons were the purchasers for a price set out in the report, but added that upon inquiry his opinion was that his Fiscal's Arachchi's report to him, upon which his report is based, was false.

The respondents to this appeal then petitioned the Court that they may be declared the purchasers of the properties sold under the writ. After inquiry the District Judge accepted the case that the report was false and proceeded to confirm the sale as if it were a sale to the respondents upon the basis of a rectification of the report made by himself. The Civil Procedure Code requires the Fiscal to report the circumstances of every sale held by him or his deputies under a writ of execution. Upon receipt of such a report and after the expiry of a month therefrom, the Court may confirm the sale so reported; equally it may set it aside on certain grounds specified in the Code. But nowhere does the Code contemplate the substitution of another person for the person reported to be the purchaser and the confirmation of the same with so important a modification. Such a sale as this is not expressly provided for, but it is manifest that a report of a sale with the qualification that the report is probably false is not a report upon which the Court can act. It must be assumed that a Court has power to make all necessary inquiries to satisfy itself that the report is true. The

District Judge has done this, and thinks that there are grounds for believing that the report is false. He cannot be expected to confirm a sale upon a false report. But it is a very different thing to say that he has the right to confirm a sale which has not been reported to him, as if a report in terms of his finding at such an inquiry were before him. The report contemplated by the Court, is a true report by the Fiscal that he had sold the property under seizure, or that he had caused it to be sold to the persons named as purchasers. It is only a sale so reported which can be confirmed. The Fiscal did not conduct the sale; he caused the property to be sold by a deputy who stoutly maintains that the purchasers were the appellants. Whether the view taken by the Fiscal as to the facts of the sale as reported by him be correct or not—and I see no reason to differ from him—it is only his opinion, and he is not in a position to report as a fact that the purchasers were the respondents and not the appellants.

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Under all the circumstances of this case, the only possible order is to set aside the sale as reported by the Fiscal, and direct that the property be resold and I order accordingly.

The appeal is allowed, but in view of the finding of the Judge on the facts, I make no order as to the costs of the appeal.

JAYEWARDENE A.J.—I agree.

Appeal allowed.
