

MANCHOHAMY v. APPUHAMY.

C. R., Colombo, 22,992.

1905.  
December 1.

*Application to set aside sale—Debtor having no saleable interest—Confirmation of sale—Interlocutory order in Court of Requests—Appeal—Civil Procedure Code, ss. 283, 284 and 285.*

A purchaser at a Fiscal's sale may apply under section 284 of the Civil Code to set aside the sale on the ground that the person whose property he purchased had no saleable interest therein) even after such sale has been confirmed under section 283 of the Code.

No appeal lies from an interlocutory order in the Court of Requests.

**I**N this case Parangige Manchohamy and her son as heirs of Odaris Appu, obtained judgment against Patikiri Arachchigey William Appuhamy for Rs. 84.80, with interest and costs. On the 28th April, 1903, writ was issued by the plaintiffs against the defendant, and on 9th June, 1903, the Fiscal, after the usual formalities, sold the right, title, and interest of the debtor in and to an undivided half share of an allotment of land, Heraligahawatta, at Homagama, and Arangalage Louis Singho became the purchaser for the sum of Rs. 136. The sale was confirmed by the Court on the 4th September, 1903, and the proceeds sale were drawn by the plaintiffs. The

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Fiscal executed a transfer in favour of the purchasers on the 16th June, 1904, and it was registered on the 18th July, 1904, the purchaser spending for the same Rs. 29. On the 4th August, 1905, the purchaser filed a petition making the defendant and the plaintiffs respondents to his petition, alleging that subsequent to his obtaining the transfer he came to understand that the defendant who had purchased the half share of the land on the 29th day of January, 1897, had sold the same on the 23rd April, 1903, to Dampahalagey Arnolis, who was since then the owner of the land, and that the judgment-debtor, on the date of sale, had no saleable interest in the said land. He asked that the Fiscal's sale be set aside under section 284 of the Civil Procedure Code, and that the execution-creditors be condemned to pay to the petitioner the sum of Rs. 136, the proceeds sale of the land, with interest thereon at 9 per cent. per annum, and also the sum of Rs. 29.50, being the expenses incurred for obtaining the transfer. It was contended for the execution-creditors that the purchaser had no remedy under section 284 after the sale had been confirmed and the transfer executed, and that his only remedy was by a separate action. The Commissioner overruled the objection and fixed the matter for inquiry as to whether the defendant had any saleable interest in the property at the date of sale. After examination the Commissioner directed the execution-creditor to pay back to the petitioner the purchase amount, Rs. 136, with costs Rs. 21. The creditors appealed.

*F. M. de Saram*, for appellants.

*Allan Drieberg*, for respondent.

1st December, 1905. LAYARD, C.J.—

This case was reserved by me that it might be argued before two Judges, as I doubted whether an application under section 284 could be made after the sale by the Fiscal had been confirmed by the Court. There are no limiting words in section 284; the section seems to allow a purchaser at any time to apply to the Court by petition on summary procedure to set aside a sale on the ground that the person whose property he purchased had no saleable interest therein. It does not limit the right to proceed by summary procedure in any way, nor enact that steps should be taken prior to the confirmation of a sale under section 283. Comparing section 285 with section 315 of the Indian Code of Procedure, it appears to me that the word "or" has been left out by accident after the word "284" before the words "when it is found" in 285. Section 285 provides for the refund of the purchase money if the sale of immovable property is

set aside under section 284, or if it has been found by separate action that the judgment-debtor has no saleable interest in the property which has been sold. I find the Indian Courts have held that a purchaser may apply for a refund of the purchase money under the similar section, 315 of the Indian Code, when it has been found in a regular suit to which the decree-holder was a party that the property did not belong to the judgment-debtor. I have only to add that this appeal was really premature because the order appealed against was an interlocutory order, and no appeal lies from an interlocutory order in the Court of Requests. Counsel for appellant informs me that the appeal was taken at the wrong time owing to some indulgence I had given to some other counsel in another case, which I ought not to have done. I did not intend that that particular case should be used as a precedent to increase the number of appeals to this Court. I now very much regret that I allowed any such indulgence to any counsel. I shall be careful not to do it in future. I understand, however, that appellant's proctor in the Court below withdrew from the case after the order was made declaring that the Court had jurisdiction to proceed in summary manner under the provisions of section 284. I think it would be hard to deprive the appellant of her right to be heard on the merits in the Court below.

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I set aside the order of the Commissioner and direct that the matter be proceeded with summarily in the lower Court. The appellant must pay the costs of this appeal and all costs incurred by the respondent in the Court of Requests. Any further costs which may be incurred in the Court of Requests to abide the order of the Commissioner.

WENDT, J.—I agree.

