

1907.
December 10.

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Middleton.

CARUPPEN CHETTY *v.* HABIBU.

Ex parte MARIKKAR HADJIAR, Petitioner.

D. C., Colombo, 22,644.

Fiscal's sale—Decree against administratrix—Application to set aside sale by heir—Person interested—Civil Procedure Code, s. 282.

Where in execution of a decree obtained against the administratrix of an intestate estate property belonging to the estate was sold by the Fiscal, and one of the heirs of the intestate estate applied to have the sale set aside under section 282 of the Civil Procedure Code,—

Held, that the applicant was a person having an interest in the property within the meaning of section 282 of the Civil Procedure Code, and was entitled to make the application.

APPEAL by the plaintiff from a judgment of the District Judge of Colombo. The facts sufficiently appear in the judgment of the Chief Justice.

W. Pereira, K.C., Acting A.-G., and Van Langenberg, for the plaintiff, appellant.

Bawa, Acting S.-G., and F. M. de Saram, for the petitioner, respondent.

Cur. adv. vult.

December 10, 1907. HUTCHINSON C.J.—

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The defendant is sued as the administratrix of the estate of Saibo M. M. Hadjar, deceased. Judgment was given against her for a sum of money; the plaintiff issued a writ of execution for the recovery of that sum, and under the writ certain immovable property was sold by the Fiscal, and was bought by the plaintiff.

The respondent to this appeal petitioned the Court to set aside the sale on the ground of certain irregularities. He was not a party to the action, but is one of the heirs of the deceased intestate. The plaintiff objected that the petitioner is not a person having an interest in the property within the meaning of section 282 of the Civil Procedure Code; he contended that the property was vested in the administratrix, and that she is the proper party to move if there has been any irregularity. The petitioner replied that he is heir to three-fourths of the estate, and that his interest is real and substantial. The District Judge over-ruled the objection, and the plaintiff now appeals against that decision.

Section 282 enacts that "the decree-holder, or any person whose immovable property has been sold under this chapter, or any person establishing to the satisfaction of the Court an interest in such property, may apply to set aside the sale on the ground of a material irregularity in publishing or conducting it."

Reference was made to District Court, Colombo, 81,499 (May 9, 1883); 6 S. C. C. 95; 2 *Weerasinghe's Report* 47; 3 S. C. R. 41.

In the last-quoted case the sale was under the writ of a first execution creditor, and it was held that the second execution creditor, having an interest in the proceeds of sale, had an interest in the land. I think that was right. Here the petitioner has an interest in the proceeds of sale; the administratrix was a respondent to the petition, and was alleged to be hostile to him. In my opinion, the petitioner has an interest in the property sold within the meaning of section 282. I would dismiss the appeal, with costs.

MIDDLETON J.—Agreed.

Appeal dismissed.