

1932

*Present : Dalton and Akbar JJ.*LETCHIMAN CHETTY *v.* SAMITCHI.

56—D. C. (Inty.) Galle, 29,221.

Fiscal's sale—Application to set aside by judgment-creditor who has not taken out writ—No interest in property sold—Civil Procedure Code, s. 282.

A judgment-creditor, who has not taken out writ at the date at which a sale is held in execution of a judgment in favour of another judgment-creditor, is not a person having an interest in the property sold within the meaning of section 282 of the Civil Procedure Code, as would entitle him to apply to Court to have the sale set aside.

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

N. E. Weerasooria, for appellant.

H. V. Perera, for respondent.

September 13, 1932. DALTON J.—

The appellant in this case was the petitioner in the Court below and sought to set aside a sale of certain property under the provisions of section 282. The learned District Judge found that he was not a person who had any interest to make the application under that section and dismissed his application. In case, however, he should have been

wrong on that particular point he went on to deal with the facts to which it will not be necessary for me to refer apart from setting out certain facts which concern the provisions of section 282.

The decree-holder in D. C., Galle, case No. 29,221, issued writ to recover the sum of Rs. 1,148.78 and costs. The Fiscal had in his hands at the same time other writs, one of which was for the sum of Rs. 18,000. He seized certain properties belonging to the judgment-debtor which are said to have been assessed at Rs. 30,000. They were sold on September 19, 1931, but only the sum of Rs. 4,120 was realized. The petitioner-appellant was judgment-creditor in another case against the same judgment-debtor, in D. C., Galle, case No. 28,987. He obtained his judgment on April 30, 1931, for the sum of Rs. 2,577 and costs, but he did not apply, so far as the facts appear from the record before us, for the issue of a writ until October 21, 1931, which was more than one month after the sale. The writ was eventually issued on December 3, 1931. It appears that it was admitted in the lower Court, and this would appear to be confirmed by the appellant's petition of appeal, that he was not entitled to concurrence in the proceeds of the sale under the provisions of section 352 of the Code. He has applied, however, to have the sale set aside under section 282 as a person having an interest in the property.

No authority has been cited to us by counsel for the appellant to the effect that the term "interest" as used in section 282 would apply to a person who has merely obtained a decree against the judgment-debtor. It is urged on behalf of the appellant that inasmuch as he had at the time of the sale a decree against the judgment-debtor he had an interest, as I understand the argument, in the property of the judgment-debtor. None of the three cases cited supports the appellant's contention. In the case of *Perera v. Brito*¹, the case referred to by the District Judge, the petitioner was a person who at the time of the sale had in fact seized the land in execution and his writ was in the hands of the Fiscal at the time of the sale, although the Fiscal purported to sell the land under one writ only. That case in no way helps the appellant. In the other case, *Karuppen Chetty v. Habibo*², it is quite clear that the person who applied to have the sale set aside was one of the heirs of the estate who had a vested interest in the property sold. Another case referred to was the case of *Chetty v. Pulle*³. In that case Lawrie J. held that every judgment-creditor who has applied for the execution of a decree against the same judgment-debtor and has not obtained satisfaction has an interest in the property of his debtor sold under another writ. That case, however, does not help the appellant here because at the earliest his application for the issue of a writ was on October 21, 1931, a date, as I said before, more than one month after the sale. Therefore, taking that judgment to be correct, at the time the appellant made his present application he had no interest in the property that was seized and sold. No other authority has been cited to us, and in my opinion the petitioner-appellant has failed to show that at the time that this property was sold he had any interest in the

¹ 29 N. L. R. p. 62.

² 11 N. L. R. p. 234.

³ S. C. R. p. 41.

property which would entitle him to apply to the Court under the provisions of section 282 to set aside the sale. The learned District Judge was right and it is not necessary, therefore, to consider the further matters referred to in his judgment.

The appeal must be dismissed with costs.

AKBAR J.—I agree.

Appeal dismissed.

