

June 16, 1911

Present : Lascelles C.J. and Middleton J.

KANDAVANAM v. HOOLE *et al.*

89—D. C. Batticaloa, 3,145.

*Application to set aside Fiscal's sale—Irregularity—Civil Procedure Code, s. 282.*

Section 282, so far as irregularity of procedure is concerned, is exhaustive ; no irregularity of procedure which is not a material irregularity in publishing or conducting a sale is a ground for setting the sale aside.

**T**HE facts are set out in the following judgment of the learned District Judge (G. W. Woodhouse, Esq.) :—

This is an application, in terms of paragraph 2 of section 282 of the Civil Procedure Code, to have the sale by the Fiscal of the eastern half share of " Vattavan " set aside on the ground of material irregularity.

The material irregularity complained of is that no demand, as required by section 226, for the payment of the costs in this case was made from the Secretary, who, as administrator in Testamentary No. 530, Batticaloa, was defendant in this case. Had that been done, the Secretary would have procured the payment of the costs, which amounted to only a sum of Rs. 55.

Further, no notice of seizure was served on the defendant. I find that these irregularities actually exist. But at the same time it is clear from the evidence that the applicant has suffered no substantial injury by reason of such irregularity.

The value of the land was entered at Rs. 500 in the administration suit (No. 530, Batticaloa), and the land fetched Rs. 526 at the sale. The applicant says that the land is worth more than Rs. 1,000, but there is no evidence of that.

The purchaser made a very reasonable offer to the applicant, namely, that he would consent to the cancellation of the sale if the price he paid and the interest on it at 9 per cent. from date of payment and costs of this application be paid to him, but the applicant would not consent to it.

I see no ground for setting aside the sale. The application is dismissed with costs, and the sale confirmed.

*Bartholomeusz*, for appellant.

*J. W. de Silva*, for respondent.

June 16, 1911. LASCELLES C.J.—

This is an appeal from a judgment of the District Judge of Batticaloa refusing to set aside a sale on the ground of certain irregularities. It is admitted that certain irregularities took place

in connection with this sale, namely, that the demand on the debtor, which ought to have been made under section 226, was not made, and that the provisions of section 240 were overlooked with regard to forwarding a list of the properties seized of the judgment-debtor. The question which we have to determine is whether these irregularities constitute a sufficient ground for setting aside the sale. Now, in a matter of this sort, it must be remembered that there are two sides to the question. On the one hand there is the interest of the owner of the property, and on the other there is the interest of the purchaser, who appears in this case to have given a fair value for the property, and has received a transfer according to law. It is practically admitted that under section 282 of the Code there is no ground for setting aside this sale, inasmuch as that section only provides for the avoidance of sales on the ground of material irregularity in the publishing or conduct of the sale. Here no such irregularity is alleged to exist. But it is said that we have the power to set aside any sales where there has been an irregularity which affects the essence of the transaction.

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C.J.

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I am of opinion that section 282, so far as irregularity of procedure is concerned, is exhaustive, and that no irregularity of procedure which is not a material irregularity in publishing or conducting the sale is a ground for setting the sale aside. To admit any other description of irregularity for this purpose would be to deprive the section of its natural and obvious meaning. There may, of course, be hard cases, and the present may be one. It is also possible that the appellant may have a remedy other than that which he has selected ; but I am of opinion that the decision of the District Judge on the question before him was right, and in accordance with the true meaning and intention of section 282. I would dismiss the appeal with costs.

MIDDLETON J.—

I am of the same opinion, and would only wish to add that the reason for section 282 being exhaustive on the two questions of irregularity, may be that these two points are matters which might very well come to the notice of a third party in the case of a purchaser under a Fiscal's sale in the ordinary course of sale.

*Appeal dismissed.*

