

judgment, that he lost $1\frac{1}{4}$ per cent., as a poundage of $6\frac{1}{4}$ per cent. was deducted from the purchase money he had deposited.

The District Munsif held that the requirements of the section had been satisfied and accordingly he set aside the sale.

The purchaser preferred this petition.

S. Subramania Ayyar for petitioner.

Counter-petitioners were not represented.

JUDGMENT.—Admittedly the judgment-debtor paid the 5 per cent. required under clause (a) of section 310-A of the Code of Civil Procedure, upon the whole amount of the purchase money including that deducted by the court for poundage. Under that clause he is not required to do any more. Having also fulfilled the requirement of clause (b) he was entitled to have the sale set aside, even though something more on account of the poundage was recoverable from him under the head of costs provided for in the last clause of the section 310-A. The petitioner was therefore wrong in opposing the setting aside of the sale. His course was to have applied to the court for the recovery of what he was entitled to under sections 315 and 310-A.

The petition is accordingly dismissed.

MUTHU
 AYYAR
 v.
 RAMASAMI
 SASTRIAL.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
 Mr. Justice Benson.*

VENKATASUBBARAYA CHETTI AND ANOTHER (COUNTER-
 PETITIONERS), APPELLANTS,

1896.
 September
 18.

v.

ZAMINDAR OF KARVETINAGAR (PETITIONER),
 RESPONDENT.*

*Civil Procedure Code—Act XIV of 1852, ss. 291, 311—Material irregularity—
 Substantial loss.*

Where a material irregularity is proved to have occurred in the conduct of a court sale, and it is shown that the price realised is much below the true value, it may ordinarily be inferred that the low price was a consequence of the

* Appeal against Order No. 3 of 1896.

VENKATA
SUBBARAYA
CHETTI
T.
ZAMINDAR
OF KARVETI-
NAGAR.

irregularity even though the manner in which the irregularity produced the low price be not definitely made out.

When a sale is adjourned under section 291, the provisions of that section must be followed with exactitude.

APPEAL against the order of E. J. Sewell, District Judge of North Arcot, passed on execution petition No. 48 of 1889, which was an application in Original Suit No. 3 of 1884.

Certain land having been brought to sale in execution of the above-mentioned decree, the judgment-debtor preferred the above petition under Civil Procedure Code, section 311, praying that the sale be set aside on the ground of material irregularity in conducting it, which, as it was averred, had caused substantial loss to him.

The District Judge found that the land had been sold for much below its value and he said,—

“If, therefore, any material irregularity in publishing the sale can be proved, the substantial injury to the zamindar cannot be disputed.

“It is admitted that petitioner got the proclamation of sale issued in August 1891 for sale in September 1891; but, by agreement with petitioner, got the sale postponed five times to take place without any fresh proclamation until it was eventually held on 29th October 1891.

“The Ameen, who conducted the sale, deposes that all sales are published by beat of drum; but that, on October 29th, this was not done as he could not find the mouigar to get the publication so ordered.

“The result was that there was practically no notice at all of the sale. The amount of notice given by the proclamation had been waived (petitioner, no doubt, being a consenting party to this). But, in the absence of such proclamation and the usual notice by tom-tom, there was really no publicity whatever given to the sale.

“I think this was a material irregularity. In the second place, the counter-petitioner concealed the existence of any prior incumbrance. The counter-petitioner examined, admits that he had notice of Kristnama Charlu's mortgage from the Sub-Registrar's certificate which mentioned it. His only explanation is that, as the date of the mortgage was 1873, he concluded that, in 1888, it was barred by limitation, and so he stated in

“his execution application that the property was to be sold free of
“incumbrances.

“But he admits that he had made no inquiries of Kristnama
“Charlu as to whether there had been any payments or written
“acknowledgment to keep alive the mortgage. As a matter of
“fact, the mortgagee had actually sued out a decree. The mort-
“gage, as the certificate showed, was for a very large sum, so that
“the counter-petitioner could not really have supposed that it had
“been allowed to lapse. I do not believe his statement that he
“said the property was free of incumbrances because he believed
“Kristnama Charlu’s mortgage was barred. I believe his object
“was to keep Kristnama Charlu in ignorance of his attachment
“and sale.

“The fact, that the sale was held free of incumbrances upon a
“false statement to that effect in the application, is, I think, a
“material irregularity.”

In the result the District Judge refused to confirm the sale and
directed a fresh sale to be held after due notice.

The decree-holders preferred this appeal.

Ramachandra Rau Sahab and Kuppusami Ayyar for appellants.

Mr. Subramaniam for respondent.

JUDGMENT.—Though such irregularities as have occurred are
mainly due to the zamindar’s repeated applications for adjourn-
ment, yet, on considering all the facts of the case, we are not
prepared to hold that the District Judge was wrong in regarding
the irregularities, especially the omission to have the sale tom-
tomed, as material and we think that where a material irregularity
is proved and it is also proved that the price realized is much
below the true value, then it may ordinarily be inferred that the
low price was a consequence of the irregularity, even though the
manner in which the irregularity produced the low price be not
definitely made out. We therefore dismiss this appeal but without
costs.

We observe that the orders of the District Judge adjourning
the sale did not comply with the provisions of section 291, Civil
Procedure Code, which require that adjournments shall be to a
specified day and hour. It is of the utmost importance that in
these matters the exact provisions of the Code should be followed.

VENKATA-
SUBBARAYA
CHETTI
“
ZAMINDAR
OF KARCETTI-
NAGAR.