

**Chaudhry Brahm Singh and anr. Vs. Bhandu**

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**Court :** Allahabad

**Decided On :** Jan-14-1921

**Reported in :** AIR1921All102; 62Ind.Cas.687

**Judge :** Gokul Prasad, J.

**Appellant :** Chaudhry Brahm Singh and anr.

**Respondent :** Bhandu

**Judgement :**

Gokul Prasad, J.

1. This application in revision arises under the following circumstances. It appears that the auction-purchasers, decree holders, applicants, obtained a decree for about Rs. 215 from a Court of Small Causes. They put in an application for transfer of the decree to a Munsif, inasmuch as they wanted to sell some of the immoveable property belonging to the judgment-debtor to satisfy the amount due to them. After certain proceedings the 3rd of September 1918 was the date eventually fixed for sale of the property. On the 30th of August 1918 the judgment-debtor deposited Rs. 59 in cash and asked for a postponement of the sale to enable him to pay up the decretal amount. The decree holders' Pleader received this money and it was agreed that the judgment-debtor should have three months' time to pay up the decretal amount, that the sale should be postponed and that the Amin should be informed accordingly. By some mistake or other information cord not be given to the Amin and he sold the property on the 6th of September 1918. This sale was ultimately confirmed and on the 9th of August 1919 the decree-holders, auction purchasers, got possession of the property, On the 15th August 1919 the judgment debtor put in an application, praying that the decree-holders had committed a fraud upon him in obtaining possession, This application was dismissed by the Court of first instance in rather a summary way. It proceeded on the ground that the judgment-debtor had been very late in making this application. The learned Judge of the Court of Appeal has, however, set aside the sale on several grounds which it is not necessary for me to consider. In my opinion the sale which took place after the order of the Court postponing it was a nullity, notwithstanding the fact that the Officer conducting the sale did not receive the order in time to enable him to act according to it. Having regard, however, to the circumstances of this case, to the laches of the judgment-debtor and to the equitable principle laid down by their Lordships of the Privy Council in the case of Ganga Pershad Sahu v. Gopal Singh 11 C. 136 : 11 I.A. 234 : 8 Ind. Jur. 637 : 4 Sar. P.C.J. 573 : 5 Ind. Dec. (N.S.) 849 (P.C.). I think the most proper order in the present case would be to direct that the judgment debtor respondent be put in possession of the property sold on his paying to the decree-holders, auction-purchasers, the sum due on their decree with interest up to the date on which they obtained possession of the

property sold minus the sum of Rs. 59 admittedly paid on the 30th of August 1918. The interest will be at the usual rate mentioned in the decree, that is, Rs. 6 per cent. per annum. The judgment-debtor respondent is allowed four (4) months time from this date within which to make the payment, and in case such payment is not made within the time mentioned above, the judgment debtor will be debarred of all the rights of taking possession of the property. Having regard to the circumstances of this case, I make no order as to costs.

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