

Dharam Rao Vs. Shankarappa

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Court : Karnataka

Decided On : Dec-10-1984

Reported in : ILR1985KAR1051

Judge : Kulkarni, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rules 85, 72, 84, 84(2), and 90

Appeal No. : C.R.P. No. 707 of 1980

Appellant : Dharam Rao

Respondent : Shankarappa

Advocate for Def. : V.S. Kulakarni, Adv. for R 2, 5 and 6

Advocate for Pet/Ap. : Shivaraj Patil, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

21 RULE 85 - Rule applies also to decree-holder Is Mandatory -- If purchase money not deposited within 15 days sale becomes null and void -- Court bound to order re-sale.

Rule 85 clearly says that while calculating the amount to be so paid into Court, the Purchaser shall have the advantage of any set-off to which he may be entitled under Rule 72. Therefore, Rule 85 of Order 21 C.P.C. applies equally also to the decree-holder. It is a mandatory provision even though the auction-purchaser might be the decree-holder. What Rule 85 of order 21 C.P.C. prescribes is that if the decree-holder is entitled to any set-off, he must deposit the remaining amount within 15 days from the date of sale. But it does not enable him to deposit the money as and when he pleases.... The deposit not having been made within the statutory limit of 15 days, the Court is bound to order re-sale because the sale already conducted being in violation of Rule 85 is null and void.

It is not necessary either for the Judgement-debtor or for any one even to apply under Order 21 Rule 90 C.P.C. to make an application for setting aside the sale. Order 21 Rule 90 C.P.C. would come into play only when the sale is vitiated by irregularity or fraud in publishing or conducting the sale (Para 8)

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