

Basawan Dube Vs. Anpurna Kunwar

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Court : Allahabad

Decided On : Apr-01-1926

Reported in : AIR1926All509; 95Ind.Cas.46

Appellant : Basawan Dube

Respondent : Anpurna Kunwar

Judgement :

Sulaiman, J.

1. This purports to be a second appeal from an original order of the Munsif refusing to set aside the sale on the ground that the auction-purchaser had not deposited the balance of the purchase money within 15 days as required by Rule 85.

2. In my opinion no second appeal lies at all. Under Order 21, Rule 86 the Court was not bound to order the property to be sold on default of payment. It; had a discretion to do so or not. The expression 'may, if the Court thinks fit,' has been substituted in place of the old word shall '. The Court therefore was perfectly justified in exercising its discretion in favour of the auction purchaser when it found that the delay was due to the fact that the civil Court itself was closed. Even if that discretion had been wrongly exercised, in my opinion, no appeal lay to the lower appellate Court, as no appeal from an order passed under Rule 86 is provided for.

3. The judgment debtor had filed his appeal as an appeal under Section 47 which in my opinion, was not authorized. The dispute in this case was between the judgment debtor and the auction purchaser who was not the decree-holder but a stranger and the dispute therefore did not come within the provisions of Section 47. Even if an appeal from the order had lain to the lower appellate Court, it is patent that no second appeal would lie to the High Court. Second appeals from such appellate orders are barred under Section 104, Sub-clause (2), Civil P.C.

4. There is absolutely no ground for interference in revision. Even if the order passed by the first Court had not been according to law, that would not bring the case within Section 115 for that Court had jurisdiction and has exercised it rightly or wrongly and has committed no irregularity in the exercise of its jurisdiction. I am, however of opinion that on the merits also the case was justly decided and even if the case had fallen under Section 115, I would have declined to interfere. The appeal is accordingly dismissed under Order 41, Rule 11 Civil P.C.