
(1933) 07 AHC CK 0003
In the Allahabad High Court

Baldeo Singh and Another

APPELLANT

Vs

Chuni Lal and Others

RESPONDENT

Date of Decision : 28-07-1933

Acts Referred:

Citation : AIR 1933 All 664

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Judgement

Niamatullah, J.—This is an application for stay of sale of a house and grove belonging to the appellants. The respondents obtained a decree for sale on foot of a mortgage, and the mortgaged property was sold. The sale proceeds did not prove sufficient for satisfaction of the entire mortgage money and the mortgagees obtained a decree over under Order 34, Rule 6, and proceeded to attach, other property belonging to the judgment-debtors whose house and grove were attached. They objected to the sale of the house on the ground that they were agriculturists and therefore their residential house could not be sold in execution of a decree. Their objection has been disallowed by the lower Court. Hence this appeal. By this application they apply for an order directing stay of sale pending their appeal.

2. There is no doubt that, unless the stay prayed for is granted, the appeal to this Court will be wholly in-fructuous. The learned advocate for the respondents contends that, as the appellants have not furnished the security required by Rule 5, Order 41, Civil P.C., no order of stay can be granted. I do not think this contention has any force. Order 41, Rule 5, applies to cases in which the decree under appeal is capable of execution and is sought to be executed. In the case before me there is no appeal from the decree which is sought to be executed. The appeal is from an order passed by the Court executing the decree dismissing the judgment-debtor's objection that the property attached was not liable to be sold. In these circumstances Rule 5, Order 41, Civil P.C., has no application. I think it reasonable to stay the sale pending the appeal. Order accordingly.