

(1930) 11 PAT CK 0010
In the Patna High Court

(Maharajadhiraj) Kameshwar Singh Bahadur

APPELLANT

Vs

Hirday Singh and Others

RESPONDENT

Date of Decision : 14-11-1930

Acts Referred:

Citation : AIR 1931 Patna 181

Hon'ble Judges : Courtney-Terrell, C.J;Adami, J

Bench : Full Bench

Judgement

Courtney-Terrell, C.J.—In this case we think that the learned District Judge was in error in the exercise of his discretion to admit additional evidence on the hearing of the appeal. The facts are that the decree-holder got a rent decree on 25th February 1926, and made an application on 5th May 1926, for execution. That was dismissed for default and the last step taken was on 27th November 1926 and a fresh application was made on 16th November 1927. The property was sold and the judgment-debtors applied on 4th July 1928 to set aside the sale. The Munsif found that no substantial loss had accrued to the applicant by reason of any irregularity considered as such but as under Order 21, Rule 22, Civil P.C., no notice had been served, the sale was void.

2. The decree-holder appealed and filed a certified copy of the previous case with a view to showing that the present case was proceeded with within one year of the last case and of course no notice would be necessary. The copy of the record of the previous case had not been placed before the Munsif; it is said because the record was at that time at Bhagalpur in connexion with another matter. It may further be said that no certified copy of the proceedings was put in as evidence before the Munsif. Nevertheless the learned Judge should not have refused to look into it and should not have taken a narrow view of the rules of procedure. In order to do justice between the parties he should have taken into consideration the proferred evidence of the facts which would establish that no notice was required. By reason of this extremely technical view of his duty to exclude further evidence the creditor has been kept out of his money

unnecessarily. We therefore set aside the order of the Subordinate Judge together with the order of the Munsif. We have looked at the certified copy of the proceedings in the former case and it is clear that the present case is within one year of the former case. The sale was therefore correctly conducted and should stand. There has been no appearance on behalf of the respondents and there will be no order as to the costs of this appeal.

Adami, J.

3. I agree.