

(1910) 02 AHC CK 0022
In the Allahabad High Court

Mathura Prasad Pande

APPELLANT

Vs

Gauri Shankar Das and Another

RESPONDENT

Date of Decision : 15-02-1910

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89

Citation : 6 Ind. Cas. 564

Hon'ble Judges : Karamat Husain, J; George Knox, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These proceedings arise out of an application made by a purchaser of immovable property at a sale held by order of (he Court. The applicant sets out that upon "his being declared the purchaser he at once paid into Court the sum of Rs. 1,000 towards the purchase-money, although he was required only to deposit at that time 25 per cent, of the purchase-money, i.e., of Rs. 2,200. Before the balance of the purchase-money was due from him the judgment-debtor approached the Court with an application under Order XXI, Rule 89, of the Civil Procedure Code, 1908, and asked the Court to set aside the sale under Order XXI, Rule 89. So far as we can ascertain from the record, along with this application the judgment-debtor deposited in Court a sum equal to five per cent, of the purchase-money for payment to the purchaser. He also deposited in Court a sum for payment to the decree-holder. We are not concerned with that in these proceedings. It does not, however, appear that the judgment-debtor paid as he ought to have done, any of the expenses of the sale. By rules of the Court this sum should have been paid in by Court-fees affixed to his application. No Such Court-fees are to be found. Then, the present applicant approached the Court with a petition asking that the money he had deposited, viz., Rs. 1,000, might be refunded to him. The reason for his not depositing the balance is stated by him to be a notice received by him from the judgment-debtor to the effect that he was going to have the sale set aside, and, therefore, no need arose for, depositing the balance. The Court refused to refund the money and the applicant

comes to us contending that as regards Rs. 450 out of the sum deposited by him, the Court below had no jurisdiction to declare it forfeited to Government and that it could declare as forfeited only 25 per cent, of the purchase-money which the purchaser is by law required to deposit immediately upon his being declared the purchaser. This contention appears to us to be sound and must prevail. As regards the balance he contends that the Code of 1908 gives the Court discretion which the Code of 1882 did not, and that the Court was no longer compelled to forfeit this deposit to Government. The Code of 1908 does give the Court discretion and we think that the Court should have, in the present case, exercised that discretion. At the same time owing to what had taken place apparently between the judgment-debtor and the purchaser, the expenses of the sale appear never to have been paid into Court. While, therefore, we set aside the order of forfeiture regarding the remainder also, we under the circumstances of the present case, direct that the purchaser will be entitled to recover the sum deposited by him, upon his depositing by way of Court-fees such sum, if any, as should have been deposited by the judgment-debtor when he petitioned the Court to set aside the sale. We make no order as to costs.