

(1912) 12 AHC CK 0024
In the Allahabad High Court

Satya Shankar Ghosal and Others

APPELLANT

Vs

Maharaj Narain Choudhri and Others

RESPONDENT

Date of Decision : 09-12-1912

Acts Referred:

Citation : 17 Ind. Cas. 728

Hon'ble Judges : Tudball, J;Rafique, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The circumstances out of which this appeal has arisen, are as follows: The decree-holder, on the 26th of January 1912, obtained a decree for possession of certain house property together with mesne profits and costs. Under the decree, the judgment-debtors were directed to vacate the house within one month, i.e., the judgment-debtors were allowed one month's grace to remove their property. On the 11th of April 1912, the decree-holder applied to execute the decree. He asked to be put in possession of the house by ejectment of the judgment-debtors because the latter had not vacated it. They also asked for attachment and sale of moveable property in order to recover the costs and mesne profits. On the 20th of April 1912, the judgment-debtors filed an appeal against the original decree in this Court. No application was made at the time for stay of sale. On the 23rd of April 1912, the Amin in the Court below gave possession to the decree-holders and duly ejected the judgment-debtors. Moveable property was also attached. On the 24th of April 1912, the judgment-debtors filed an application stating that they had filed an appeal in the High Court and had also applied to that Court for stay of execution, (which was incorrect), and they asked the Court executing the decree to postpone the proceedings until the order of the High Court was received. On the 25th of April, they made another application to the Court below stating that they had filed the appeal, but the decree-holders had in execution dispossessed them and attached their property, that they had money ready as security and they asked the Court to release the property and restore them to

possession. The Court thereupon ordered the money to be deposited in the treasury as security, released the moveable property and passed an order to the Amin to re-place the judgment-debtors in possession. Accordingly, the decree-holders were dispossessed and the judgment-debtor replied in possession. It is against this order that the present appeal has been made. In the first place, on filing an appeal against the original decree, if the judgment-debtors wished to secure stay of execution, they ought to have applied at once to this Court for that purpose. The lower Court had no longer any power to stay execution after the appeal had been filed in this Court. In the next place, the decree having been executed in so far as possession of the house concerned, that portion of the decree could no longer be stayed, it having been executed. The utmost that the lower Court could have done on the 25th of April was to stay its hands and go no further. It had no power whatsoever to go backward to drive the decree-holders out of possession and re-place the judgment-debtors in possession. Its order was clearly passed without jurisdiction and was completely ultra vires. We accept the appeal, set aside the order of the Court below and direct that the decree-holders be at once restored to the possession which will be theirs until the decree is set aside. The appellants will have their costs in this Court including fees on the higher scale.