

1934

MUNNA LAL
AND SONS
v.
MUNICIPAL
BOARD,
JHANSI

to proceed by way of appeal to the District Magistrate under section 160, Municipalities Act; and under section 164, Municipalities Act, the applicant was precluded from making the claim in court which he has made.

For these reasons I dismiss this application in revision with costs.

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Ganga Nath*

1934

October, 24

NAWAL KISHORE AND OTHERS (DECREE-HOLDERS) v.
BUTTU MAL (AUCTION PURCHASER) AND SURHAN SINGH
(JUDGMENT-DEBTOR)*

*Civil Procedure Code, order XXI, rules 85, 86—Re-sale on
default of payment by auction purchaser—Mandatory and
not discretionary—Time can not be extended.*

When default is made by the auction purchaser in paying into court the full amount of the purchase money within the time allowed by order XXI, rule 85 of the Civil Procedure Code, the court has no jurisdiction to extend the time but must order a re-sale under rule 86. The only discretion given by rule 86 is in the matter of forfeiture of the deposit of 25 per cent. made by the auction purchaser, and not in the matter of re-sale. *Basawan Dube v. Anpurna Kunwar* (1), overruled.

Mr. M. L. Chaturvedi, for the appellants.

Mr. R. K. S. Toshniwal, for the respondents.

SULAIMAN, C.J., and GANGA NATH, J.:—This is a decree-holders' appeal from an order confirming the sale. The property was sold at an auction on the 9th of October, 1930, for Rs.2,325 and was purchased by the respondent, Buttu Mal. The auction purchaser deposited 25 per cent. as required by order XXI, rule 84, immediately, but he did not deposit the balance of the purchase money within 15 days as required by rule 85. Possibly the reason was that an application was filed on

*First Appeal No. 147 of 1933, from an order of Muhammad Akib Nomani, Subordinate Judge of Agra, dated the 26th of April, 1933.

(1) A.I.R., 1926 All., 509.

behalf of the judgment-debtor immediately to have the sale set aside. This application remained pending for a long time and was ultimately disposed of on the 18th of November, 1932. Previous to this date the auction purchaser obtained the permission of the court on the 18th of July, 1931, to deposit the balance in court and he deposited the remaining three-fourths on the 27th of July, 1931.

The decree-holder, however, applied that the deposit had not been made in accordance with rule 85 and that the property should be re-sold. The learned Subordinate Judge first allowed the application *ex parte* but, later, on the application of the auction purchaser dismissed the decree-holder's application and confirmed the sale. He relied on an observation made in *Basawan Dube v. Anpurna Kunwar* (1).

It is contended before us that the Subordinate Judge had no jurisdiction to extend the time and that when the default was made in depositing the balance of the amount as required by rule 85, the court ought to have ordered the re-sale of the property, and that the only discretion is as regards the forfeiture of the deposit of 25 per cent.

This contention is obviously well founded. Rule 85 requires that the full amount of the purchase money shall be paid by the purchaser into court before the court closes on the 15th day from the sale of the property. Rule 86 also requires that in default of payment within the period mentioned in the last preceding rule, the deposit may, if the court thinks fit, after defraying the expenditure, be forfeited to Government and the property *shall* be re-sold.

In *Basawan Dube's* case (1) no appeal lay to the High Court and there was no ground for interference in revision. It might not therefore have been necessary to decide the question whether the court below had erred in accepting the deposit beyond time, but the observa-

(1) A.I.R., 1926 All., 509.

1934
 NAWAL
 KISHORE
 v.
 BUTTU MAL

tion to that effect was certainly wrong and not warranted by the language of order XXI, rule 86. This case must be deemed to have been overruled by implication of a Division Bench ruling of this Court in *Lala Lachman Narain v. Chattar Singh* (1), in which it was clearly held that the discretion was confined to the forfeiture and not to the re-sale of the property.

We accordingly allow this appeal and setting aside the sale of the 9th October, 1930, direct that proceedings be taken for re-sale. The appellants will have the costs from the auction purchaser, Buttu Mal, in both courts.

REVISIONAL CRIMINAL

Before Mr. Justice Bajpai

EMPEROR v. BENI*

1934
 October, 25

Civil Procedure Code, order XXI, rules 24, 44—Attachment of crops—Copies of warrant of attachment not signed or sealed by court—Attachment illegal—Removal of crops not theft—Indian Penal Code, section 379—Accused alleging purchase of crops before the attachment—Question of title should be investigated.

Certain crops were attached in execution of a decree and entrusted to a custodian. Subsequently, they were removed by a person, with the consent of the judgment-debtor, and in spite of the remonstrances of the custodian. At a trial of this person for theft it appeared that the copies of the warrant of attachment, which were affixed on the land on which the crops stood and on the door of the judgment-debtor's house, were not signed by the Judge and were not sealed with the seal of the court. *Held*, that the formalities prescribed by order XXI, rules 24 and 44, of the Civil Procedure Code not having been complied with, the attachment was illegal and, therefore, the property did not pass from the possession of the judgment-debtor into the possession of the court, and its removal with the consent of the judgment-debtor was not theft.

Held, further, that an allegation made by the accused that he had purchased the crops some time before their attachment

*Criminal Revision No. 198 of 1934, from an order of Vishnu Ram Mehta, Additional Sessions Judge of Pilibhit, dated the 5th of January, 1934.

(1) E.S.A. No. 1393 of 1928, decided on 18th April, 1929.