
(1978) AWC 209

Allahabad High Court

Case No: S.A. No. 340 of 1968

Ram Chandra

APPELLANT

Vs

Munir Ahmad and
Another

RESPONDENT

Date of Decision: Feb. 3, 1978

Acts Referred:

Civil Procedure Code Amendment Act, 1956 " Section 13#Civil Procedure Code, 1908 (CPC)
" Section 144, 144(1), 144(2), 2(14)

Citation: (1978) AWC 209

Hon'ble Judges: C.S.P. Singh, J

Bench: Single Bench

Advocate: A.B. Saran, for the Appellant; R.S. Verma and R.H. Zaidi, for the Respondent

Final Decision: Dismissed

Judgement

C.S.P. Singh, J.

Ram Chandra now represented by his sons obtained a decree against Karim Bux and in execution of that decree had his

house sold. Munir Ahmad purchased the house in auction. Subsequently, Karim Bux judgment-debtor filed an objection against the sale which was

finally allowed by this Court. Thereafter, Munir Ahmad the auction purchaser filed an-application u/s 144 CPC for refund of the auction money

which had been taken by the Plaintiff-decree-holder. This application was rejected by the Munsif but was allowed by the Civil Judge. The decree-

holder has filed the present appeal challenging the order of the Civil Judge.

2. Counsel for the Appellant contended that as the decree in the execution of which the house was sold has not been reversed, the application was

not maintainable u/s 144 Code of Civil Procedure. This argument would have some force in case Section 144 CPC had not been amended by Act

No. 66 of 1956. Section 13 of that Act introduced the words ""or order"" after the word ""decree"" in the parent section. As a result Section 144

CPC applied not only to cases of reversion or of variation of a decree, but after the amendment is equally applicable to orders also. Section

144(2) bars a suit for the purposes of obtaining any restitution or other relief which can be obtained on an application u/s 144(1). In this situation,

the only remedy open to the auction purchaser was to file an application u/s 144(1) which he rightly did. Counsel for the Appellant contended that

the order confirming the sale and conveying the property to the auction purchaser was not an order as contemplated by Section 144 Code of Civil

Procedure. This argument flies in the face of Section 2(14) of the CPC where ""an order"" has been defined to mean the formal expression of any

decision of a Civil Court which is not a decree. The order confirming the sale, and subsequent orders based thereon as a result of which the house

was transferred to the auction purchaser are clearly covered under this provision. As a result of the objection being allowed, the earlier order

confirming the sale in favour of auction purchaser and conveying the property to him stood automatically reversed. Thus, the lower appellate court

was right in allowing the appeal.

3. The appeal fails and is dismissed. There is no order as to costs. The stay order is discharged.