

## Ram Lal Sahu Vs Dina Nath

**Court:** Allahabad High Court

**Date of Decision:** Feb. 6, 1942

**Hon'ble Judges:** Verma, J; Allsop, J

**Bench:** Division Bench

**Advocate:** Lakchmi Saran, for the Appellant;

**Final Decision:** Dismissed

### Judgement

Allsop and Verma, JJ.

This is an application for the restoration of an execution appeal which was dismissed by a Bench of this Court of

which one of us was a member. The appeal was dismissed because Learned Counsel for the Appellant stated that his client had instructed him to

withdraw the appeal. It appears that the Applicant was a subsequent and Dinanath the opposite party a prior mortgagee of certain property. The

Applicant instituted a suit and obtained a decree for the sale of the property which he himself purchased. Thereafter Dinanath instituted a suit on his

own mortgage impugning the Applicant as a subsequent mortgagee and he obtained a decree for the sale of the property. The Applicant's defense

in that case was that the property in his possession in consequence of the sale of his mortgage was not the same as the property mortgaged to

Dinanath. The point was apparently decided against the Applicant and a decree was passed. When proceedings were taken in execution of the

decree the Applicant again raised the point that the property mentioned in the decree was not the property in his possession. The decision was

against him and it was against that decision that he appealed to this Court. He withdrew the appeal, according to him, because he was advised that

his proper remedy was to file a regular suit in order to obtain a declaration that the decree did not involve the property which was in his

possession. He filed such a suit but it was dismissed by the trial Court and though an appeal to the first Court was allowed this Court restored the

order of the trial Court. It was when this Court dismissed the regular suit that the Applicant filed the present application for restoration of his appeal

against the order of the Court executing the decree.

2. It seems to us that it is quite impossible now to restore an appeal which was dismissed on the application of the Appellant himself that he wished

to withdraw it. It may be that the Appellant was acting under a misapprehension but that cannot affect the result. It we were to restore appeals

which had been withdrawn in this manner we would create a state of affairs where nobody would ever be certain that litigation in which he was

involved was concluded.

3. Learned Counsel has referred us to the case of Mohammed Shafi and Others Vs. Chedu and Others, but the facts of that case were quite

different. A suit had been dismissed and some of the Plaintiffs had appealed. Another Plaintiff had made an application to the trial Court to set

aside the order dismissing the suit and to restore it to its original number. The trial Court accepted the contention of the Plaintiff and passed an

order accordingly. That order was subsisting when the appeal against the decree dismissing the suit came before this Court. It was naturally

brought to the notice of the Court that the decree had already been set aside by the action of the trial Court and consequently the appeal was

dismissed. At a later stage the order of the trial Court restoring the suit was set aside by this Court and this Court then agreed to restore the appeal

against the order dismissing the suit. It seems to us that the circumstances were quite different from those of the case before us We do not think

that we can possibly restore an appeal that was dismissed at the instance of the Appellant himself even if the Appellant was acting under a mistake

of law We consequently dismiss this application.