

(1880) 02 AHC CK 0015

Allahabad High Court

Case No: None

Mian Jan

APPELLANT

Vs

Man Singh

RESPONDENT

Date of Decision: Feb. 5, 1880

Citation: (1880) ILR (All) 686

Hon'ble Judges: Straight, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pearson, J.

The first plea in appeal is abandoned as untenable. The statement contained in the second ground of appeal is not accurate. What appears from the proceedings is that the 20th September 1878, had been fixed for the sale of the judgment-debtor's property in execution of decree in pursuance of an order of the Subordinate Judge, who, on that same date on the judgment-debtor's application, ordered the sale to be postponed. The sanction to the sale originally given being thus withdrawn, it follows that the sale could not legally be held, and that the sale which was effected, the order of postponement notwithstanding, was unlawful and invalid. It is true that the sale had been effected before the order directing its postponement had reached the officer conducting the sale, but the circumstance, though it exonerates him from blame in the matter, does not make the sale good and valid. It is to be regretted that the Subordinate Judge should have confirmed the sale which he now rightly pronounces to have been wholly illegal. It seems that he thought himself precluded from setting it aside suo motu, and no application had been made to him to set it aside. Shortly after he had confirmed the sale an application was made to him by the decree-holder to review his order confirming it, whereupon he set aside the sale as illegal, and so virtually reversed his former order. In reviewing his order and setting aside the sale as illegal, we cannot say that he acted ultra vires or that his action was otherwise illegal. This application is therefore disallowed and dismissed

with costs.