

## Raghunandan Pandey Vs Garju Mandal and Another

**Court:** Patna High Court

**Date of Decision:** April 8, 1925

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 115, 47

**Citation:** 91 Ind. Cas. 217

**Hon'ble Judges:** Ross, J; B.K. Mullick, J

**Bench:** Division Bench

### Judgement

Ross, J.

This is an application in revision against an order by the learned District Judge of Bhagalpore, reversing an order of the Munsif of

Bhagalpore passed u/s 174 of the Bengal Tenancy Act. There is also an appeal for admission.

2. It appears that in execution of a decree for rent the tenant's holding was sold and was purchased by a third party. Within thirty days of the sale

the deposit of 5 per cent, of the purchase money for payment as compensation to the auction-purchaser was made in Court and the deposit was

accompanied by a petition stating that the amount recoverable under the decree had been paid to the decree-holder and the decree-holder himself

joined in this petition. The judgment-debtor, therefore, prayed u/s 174 of the Bengal Tenancy Act that the sale should be set aside. The learned

Munsif was of opinion that there had been no compliance with the provisions of the section and he declined to set aside the sale. On appeal the

learned District Judge thought there had been substantial compliance with the terms of Section 174, inasmuch as after the admission of the decree-

holder that he had received the money, nothing more was recoverable under the decree and only the compensation payable to the auction-

purchaser remained to be deposited. He, therefore, set aside the sale.

3. It is contended on behalf of the auction-purchaser that no appeal lay to the District Judge. It is to be noticed that in this case the decree-holder

and the judgment-debtor were at one and there was no question to be derided between them. The question for decision was a question between

the judgment-debtor and the auction-purchaser and, therefore, the case did not fall within the provisions of Section 47 of the C.P.C. It was held in

Raziud-din Hossain v. Bindeshwari Prasad Singh 36 Ind. Cas. 769 that in such a case no appeal lies. In Akhouri Prem Narain v. Fahimunnissa 40

Ind. Cas. 662 : 2 P.L.J. 525 : (1917) pat. 244 : 3 P.L.W. 18, the question for decision was a question between decree-holder and judgment-

debtor and on this ground it was held that an appeal did lie. With reference to the case just cited, it was observed that ""all the authorities recognize

and decide that in a case where an auction-purchaser is not a party to the suit, then no appeal lies against an order u/s 174, but if he is a party to

the suit and is a decree-holder in fact that then Section 47 comes into play and an appeal lies, it being a matter arising between the parties to the

suit touching the execution, satisfaction or discharge of the decree."" The same view was taken in Miscellaneous Appeal No. 215 of 1924 where it

was held that on a question u/s 174 between the judgment-debtor and the auction-purchaser no appeal lay.

4. The order of the learned District Judge must, therefore, be treated as having been made without jurisdiction. It is, therefore, subject to

revision u/s 115 of the C.P.C. The learned Vakil for the opposite party, however, contends that even if the order was without jurisdiction, this

Court should not interfere with it in revision if it is substantially a just order. It is, therefore, necessary to consider whether the decision of the

learned Munsif or that of the learned Judge was the correct decision. This question is concluded by the decision of the Calcutta High Court in

Kabilaso Koer v. Raghu Nath Sakan Singh 18 C. 481 : 9 Ind. Dec. (N.S.) 321, where on facts precisely similar to those of the present case it

was held that Section 174 had not been sufficiently complied with.

5. The application in revision must, therefore, be allowed and the order of the learned District Judge must be set aside and the order of the Munsif

restored and the sale confirmed.

6. The petitioner is entitled to the costs of this application; hearing fee, one gold mohur.

7. The appeal is dismissed.

Mullick, J.

8. I agree.