

(1914) 01 CAL CK 0003**Calcutta High Court****Case No:** None

Nepal Chandra Bhattacharjee

APPELLANT

Vs

Ramendra Nath Chakravarty and
Another

RESPONDENT

Date of Decision: Jan. 26, 1914**Citation:** AIR 1914 Cal 718 : 24 Ind. Cas. 384**Hon'ble Judges:** Beachcroft, J; Asutosh Mookerjee, J**Bench:** Division Bench**Judgement**

1. In this case upon the application of an under-tenant proceedings were instituted for reversal of a sale held in execution of a decree for arrears of rent. The Court of first instance dismissed the application. This was followed by an order on the 9th March, 1912, which entitled the decree-holder and the judgment-debtors to withdraw from Court the sum deposited by the auction-purchaser. On an application by the under-tenant, the Court of Appeal below subsequently set aside the execution sale. The position now is that the auction-purchaser has lost the property he had purchased and the sum deposited by him has meanwhile been withdrawn from Court by the decree-holder and the judgment-debtors. In these circumstances we are of opinion that the Subordinate Judge should have not merely set aside the sale but also directed the decree-holder and the judgment-debtors to bring back into Court the sums which they had respectively withdrawn, in order that the auction-purchaser might receive back what he had paid into Court. It is clearly incumbent on the Court to make such an order for restitution in the exercise of its inherent power, as otherwise a grave injustice might be done to the auction-purchaser. We accordingly make the Rule absolute to this extent, namely, that while the order for reversal of sale will stand confirmed, an additional order will be made to the effect that the decree-holder and the, judgment-debtors will be directed to bring back into Court, for payment to the auction purchaser, the sums withdrawn by them. The Subordinate Judge will fix a time within which this- order must be carried out. If it is not carried out, the auction-purchaser will be at liberty to

execute this order as if it were a decree of this Court and recover the sums by execution against the persons who have withdrawn them. There will be no order as to costs.