
(1924) 05 PAT CK 0009

In the Patna High Court

Bhagwan Chandra Das and Another

APPELLANT

Vs

Rai Sahib Dharam Narain Das and Others

RESPONDENT

Date of Decision : 21-05-1924

Acts Referred:

Citation : AIR 1924 Patna 802

Hon'ble Judges : Ross, J; Das, J

Bench : Full Bench

Judgement

Das, J.—This appeal is directed against the orders passed by the learned District Judge of Santal Perganas on the 28th August, 1923, by which he affirmed the order of the Subordinate Judge of Rajmahal dated the 7th July, 1923. The decree-holders are the appellants before us. The opposite party represented by Mr. Naresh Chandra Sinha purchased some of the properties, which are the subject-matter of this appeal, subject to pre-existing mortgage in favour of the appellants. The appellants sued upon their mortgage and obtained a decree. They are now proposing to execute the mortgage-decree and the only question is whether they are entitled to have all the properties which were mortgaged to them sold in execution of their decree. As I have already stated the opposite party purchased some of the properties and he applied for an order that the properties purchased by him should in the first instance be excluded from the sale. The order of the learned Subordinate Judge was in these terms:

I direct that the properties mentioned in the petition of D. N. Das be excluded from sale, as the remaining property is probably sufficient to realise the decretal amount. If the sale of these lands does not satisfy the decree, the lands excluded now will be put up to auction to make up deficiency. Put up the amended sale proclamation on the 7th July 1923.

2. This order has been affirmed by -the learned District Judge. In my opinion the form of the order is defective. The decree-holder is entitled to have all the properties mortgaged to him, put up for sale, but it is entirely in the discretion of the Court to direct in which order the properties should be sold, otherwise costs

may be thrown away. It may be that the properties other than those which have been purchased by the respondents would be insufficient to satisfy the claim of the decree-holders. Upon the form of the order passed by the Courts below it would be necessary for the decree-holder to take out execution over again from the first stage to the last. Now, it seems to me that the decree-holder should not be forced to this position. All the properties must be advertised for sale and when they are actually brought into execution and become subject to sale it would be then for the Court to decide on just and equitable principles which property ought to be first sold, see *Syed Mahammad Seddik v. Ram Lal Mandar* (15 C.W.N. 80). The result is that all the properties will be advertised for sale and the properties other than those which have been purchased by the respondent will be first put up for sale. If there is a deficiency then those properties also will be put up for sale. There will be no order as to costs.

Ross, J.

3. I agree.