

(1957) 05 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Miscellaneous First Appeal No. 19 of 1957

Chandkanwar and Others

APPELLANT

Vs

Rambhajan and Another

RESPONDENT

Date of Decision : 17-05-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : AIR 1957 Raj 329 : (1957) RLW 376

Hon'ble Judges : K.L. Bapna, J

Bench : Single Bench

Advocate : Ratanlal Purohit, for the Appellant;

Final Decision : Dismissed

Judgement

Bapna, J.—This is an appeal against an order of the learned Senior Civil Judge vacating an injunction.

2. It is alleged that Rambhajan and Amarchand respondents obtained a decree for recovery of Rs. 4,920-14-0 against certain persons not named in the memorandum of appeal and who have not been made parties to this appeal. The appellants claim a certain share in the property sought to be sold on the ground that it was ancestral property and the debts for which the decree was obtained were neither for legal necessity nor for paying any antecedent debts. It does not appear from this memorandum whether the judgment-debtor is the father or what relation of the appellants. The appellants claim 4/10th share in the mortgaged house.

The appellants who were plaintiffs prayed for injunction restraining the mortgagee from putting up the property to sale in execution of the decree. The learned Civil Judge granted an injunction subject to the condition that the plaintiffs took upon themselves the responsibility to pay the deficit amount in case their suit is dismissed and the mortgagee by sale of the property be unable to recover the full amount of the decree. A surety was demanded for paying up

the deficit amount to the mortgagee. This order was passed on the 21st March and time was allowed up to the 9th April, 1957. The plaintiffs did not file any security as directed, and the learned Civil Judge vacated his order. The appellants have come in appeal.

3. In my opinion the appellants were given a good opportunity to have the sale of the property stayed but they did not avail of it. Learned counsel urges that a condition cannot be attached to the grant, of injunction. This is not correct. The grant of injunction is in the nature of equitable relief and conditions can be imposed so that the interest of other party may also be safeguarded. There is no prohibition under the Code that a condition cannot be attached to an injunction. I see no force in this appeal and it is hereby dismissed in limine.