

(1925) 12 CAL CK 0021
In the Calcutta High Court

Gadadhar Mandal

APPELLANT

Vs

Sreemati Manaka Dassi and Nagendra Nath Saha and
Another

RESPONDENT

Date of Decision : 10-12-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 10

Citation : AIR 1926 Cal 859 : 94 Ind. Cas. 391

Hon'ble Judges : Cuming, J;B.B. Ghose, J

Bench : Division Bench

Judgement

B.B. Ghose, J.—This appeal by the defend- ant No. 3 is against the decree of the Second Additional District Judge of Alipur affirming the decree of the Subordinate Judge of that place. The plaintiff sued for a declaration that the properties described in the plaint were subject to the charge of her maintenance which was decreed in Suit No. 23 of 1911. The plaintiff brought that suit in forma pauperis for recovery of certain properties and in the alternative for a charge for her maintenance on those properties. She failed in her claim for recovery of the properties, but her right of maintenance was declared as a charge on those properties and costs were decreed in favour of the Government to be recovered from the arrears of maintenance due from the defendant in that case who is the defendant No. 2 in the present suit. The Government, however, proceeded to sell the property in the hands of defendant No. 2 for the realization of the Court-fees and it was purchased by defendant No. 1. Defendant No. 1 subsequently sold the property to defendant No. 3. Defendant No. 3 claims that he got the property by virtue of the sale in execution by the Government free from the charge for maintenance of the plaintiff. Both the Courts below have negated that plea and declared the property to be subject to the charge claimed by the plaintiff.

2. It is contended on behalf of the appellant that under Order XXXIII, Rule 10, C.P.C, the Government was entitled to a first charge on the subject-matter of the suit and he has contended that the property in question was the subject-matter

of the suit and as the Government sold the property in enforcement of the first charge the defendant No. 3 obtained it free from the subsequent incumbrance by way of the maintenance charge of the plaintiff. The short answer to this contention is that under that rule of the Code the first charge of the Government for the costs must be on the subject-matter of the suit, so far as the plaintiff succeeded in the suit, or in other words on the charge declared in favour of the plaintiff for maintenance on the property in question. As a matter of fact, however, the decree directed that the Government should recover the costs out of the arrears of maintenance in the hands of defendant No. 2. Instead of recovering the costs from the arrears of maintenance the Government proceeded to sell the properties in the hands of defendant No. 2. The result of this sale must be held to be the sale of what may be called the equity of redemption in the hands of defendant No. 2 that is the property subject to the charge of maintenance declared in favour of the plaintiff. The appeal must, therefore, be dismissed with costs.

Cuming, J.

3. I agree.