

(1918) 03 CAL CK 0050
In the Calcutta High Court

Giridhari Lal Serowgi

APPELLANT

Vs

Syed Altaf Ali Chowdhury and Others

RESPONDENT

Date of Decision : 19-03-1918

Acts Referred:

Citation : 46 Ind. Cas. 564

Hon'ble Judges : Teunon, J; Newbould, J

Bench : Division Bench

Judgement

1. This appeal is against an order settling the terms of a sale proclamation to be issued with a view to the sale of certain properties in execution of a decree obtained on a mortgage. The appellant before us was the judgment-debtor No. 2 in that decree inasmuch as at the time when the suit was brought and the decree was obtained, he held the position of a puisne mortgagee. It appears that there were certain prior mortgagees known as the Roys. The fact that the sale is to take place subject to the incumbrance of the Roys, has been set out we are informed in the sale proclamation. But the appellant before us says that since the decree he has acquired the interest of the Roys and he desires that that fact should also be noted in the sale proclamation. It has also been stated before us that since the decree under execution, he has also been appointed by this Court the Receiver in a suit brought by the mortgagors against the Roys, and he has further; it is stated, acquired the interest of the mortgagors. His contention that these facts should also be stated in the sale proclamation are, however, not pressed before us. The statement in the sale proclamation that the sale is to take place subject to the incumbrance of the Roys, in our opinion, should be sufficient to protect the interest of the present appellant. There is thus no substance in this appeal, and apart from that, it is well settled by the various decisions of this Court that against an order such as this, no appeal in fact lies.

2. This appeal is, therefore, dismissed with costs. We assess the hearing-fee at three gold mohurs.

3. The connected Rule No. 101 of 1917 is discharged without costs.