
(1910) 01 CAL CK 0037
In the Calcutta High Court

Gopi Krishna Mandal

APPELLANT

Vs

Ram Lal Mandal and Others

RESPONDENT

Date of Decision : 19-01-1910

Acts Referred:

Citation : 5 Ind. Cas. 524

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

Bench : Division Bench

Judgement

1. In this appeal we are invited by the judgment-debtor as also by the decree-holders to modify an order of the Court below in the course of proceedings in execution of a mortgage decree made on the 4th August 1904. Shortly after the decree, one of the mortgaged properties was sold for arrears of revenue and a sum of over Rs. 5,000 was deposited in the Collectorate as surplus sale proceeds. On the 1st October 1904, upon the application of the plaintiff, this sum was attached. On the 11th November following, the mortgage decree nisi was made absolute. Applications for execution were made from time to time, but we are not concerned with them now. In the course of the present execution proceedings, the judgment-debtors objected that the application was barred by limitation and that the decree-holders were not entitled to claim interest after the date fixed in the decree for redemption of the mortgage properties. The decree-holder contended on the other hand that these objections were unfounded and that he was entitled to interest on the entire judgment-debt irrespective of the sum in deposit in the Collectorate and attached at his instance on the 1st October 1904. The Court below overruled the objection of the judgment-debtor as also that of the decree-holder. The judgment-debtor has now appealed to this Court and on behalf of the decree-holder, a memorandum of cross-objection has been presented.

2. In so far as the appeal is concerned there is clearly no substance in it. It has not been seriously contended that the application for execution is barred by limitation; nor can it be successfully argued that the decree-holder is not entitled

to interest after the date fixed for redemption. The decree is perhaps a little ambiguous, but interpreted in the light of the judgment, there can be no question as to what was really intended.

3. In support of the cross-objection reliance has been placed upon a decision of this Court in *Megraj Marwari v. Nursing Mohan Thakur* 33 C. 846, and it has been argued that the decree-holder is entitled to interest on the entire judgment-debt till realization, that is, till any sum paid by the judgment-debtor becomes actually available for the use of the decree-holder. The Case relied upon, however, is clearly distinguishable, because in the case before us the sum deposited in the Collectorate manifestly became available to the decree-holder as soon as his decree was made absolute on the 11th November 1904. The moment the mortgaged property was transformed into money by reason of the revenue sale, the lien of the judgment-debt fastened by operation of law upon the surplus sale proceeds, *Debendra Nath v. Abdul Sarned* 1 Ind. Cas. 264 : 10 C.L.J. 150, and as soon as such sum was attached at the instance of the decree-holder on the 1st October 1904, it ceased to be available to the judgment-debtor. It was by reason of the want of necessary diligence on the part of the decree-holder that he found himself unable to take out the sum earlier than the 6th April 1906. We must, therefore, overrule the cross-objection and hold that on the 1st October 1904, there was a partial satisfaction of the decree to the extent of the sum in deposit in the Collectorate, and the decree-holder is not entitled to claim interest on such sum.

4. As both the appeal and the cross-objection have failed, there will be no order as to costs.