

(1898) 11 AHC CK 0004
In the Allahabad High Court

Kunj Behari Lal and Another

APPELLANT

Vs

Parsotam Narain

RESPONDENT

Date of Decision : 25-11-1898

Acts Referred:

Citation : (1899) ILR (All) 137

Hon'ble Judges : Dillon, J;Burkitt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Burkitt and Dillon, JJ.—We are unable to agree with any of the reasons given by either of the two lower Courts for their decisions in this case. Put very briefly, the facts are as follows:

A certain estate, which had been mortgaged separately to the plaintiffs and to the defendant, was sold to pay arrears of Government revenue. The effect of that sale was to wipe off all incumbrances theretofore existing on the estate, though of course leaving untouched the mortgagee's personal remedies, if any, against the mortgagor. The estate, when sold, produced a much larger sum than was necessary to discharge the arrears of revenue. When such an event occurs the duty of the Collector is distinctly laid down by Section 185 of the Land Revenue Act of the North-Western Provinces (Act No. XIX of 1873). That Section directs the Collector to pay the surplus to the person whose land has been sold, and Section 186 further directs that the surplus shall not be paid to any creditor of the person whose land is sold except under the order of a Civil Court; and further that, except under such order, the money shall not be retained in the Government treasury. It is admitted here that no Order of any Civil Court was passed in the matter or served on the Collector. The Collector's duty therefore, as laid down by the Sections referred to above, was to have paid the money forthwith to the person whose land had been sold. That person, it seems, did apply to the Collector for the money, and the two mortgagees, the plaintiffs and defendant in this case, also applied. The Collector, disregarding the provisions of

Sections 185 and 186 of the Revenue Act, refused to pay the money to the person whose land had been sold, and, disregarding the claim of the latter, he handed the money over to creditors, thereby paying off the whole of the amount alleged to be due to one creditor and part of the money alleged to be due to the other creditors. The latter thereupon, alleging that their mortgage had priority over the former creditor's mortgage, have instituted this suit against the creditor whose debt the Collector had paid is full, and claim from the latter a sum of money sufficient to pay off the balance of their own debt.

2. The two lower Courts, for reasons into which it is unnecessary to enter, as they are absolutely wrong from beginning to end and have failed to touch the real point in the case, have decided, one in favour of the plaintiffs and the other in favour of the defendant.

3. In our opinion, the plaintiffs have failed to show any cause of action in this case. According to their plaint they seem to be of opinion that they and the other creditors had a right by law to call on the Collector to discharge their debts in order of priority. That is an entirely erroneous and unfounded position. The Collector not only was not bound to discharge their debts, but he was forbidden by law to adopt such a course. In the absence of any order from a Civil Court, the Collector's duty was to have forthwith paid the surplus proceeds of the sale to the person whose land had been sold, and to no one else. He has chosen to disregard the provisions of the Act by discharging the debts of the creditors according to his own notions of equity. Such an unauthorized, and, we may call it, voluntary payment by him in violation of his duty did not, in our opinion, create any cause of action in the plaintiffs as against the defendant. In illustration of our meaning we would take the case, say, of a wealthy and philanthropic individual who, hearing of these debts, was good enough to pay off one in full and the other in part. Can it be said that such payment of one debt in full created a cause of action in the other creditor to have the balance of his debt made good, because of its priority, by the other creditor? We think not, and we regard the payment of this sum to this creditor by the Collector as nothing more than a voluntary act of the Collector, who, disregarding the law he was bound to administer, thought fit to divide the money in his hands, which was payable to the defaulter only, between the two creditors of the latter.

4. In our opinion this suit fails, there being no cause of action. For that reason, and not for the reasons given by the Lower Appellate Courts, which, in our opinion, are completely erroneous, we dismiss this appeal with costs.