

(1909) 01 CAL CK 0017
In the Calcutta High Court

Maharani Janki Koer

APPELLANT

Vs

Sham Sivendra Sahi

RESPONDENT

Date of Decision : 25-01-1909

Acts Referred:

Citation : (1909) 01 CAL CK 0017

Judgement

1. This is a Rule issued by this Court calling upon the Receiver appointed in the course of a mortgage suit as also upon the other parties to the litigation to show cause why he should not be made a party to the proceedings for ascertainment of mesne profits in a suit against the mortgagor. It appears that the petitioner before this Court obtained a decree for recovery of possession of immovable property and for ascertainment of mesne profits against the executant of the mortgage for the enforcement of which a suit has been brought by the mortgagee, in the course of which a Receiver has been appointed to take charge of the mortgaged properties. The execution creditor now seeks to ascertain the mesne profits as against his judgment-debtor and prays that the enquiry may be held in the presence not only of the judgment-debtor but also of the Receiver in charge of the property comprised in the mortgage executed by his judgment-debtor. It is conceded that the mesne profits are in respect of properties not covered by the mortgage security. But it is argued that as the mortgagor has except his dwelling house, no property other than what is comprised in the mortgage suit and as in the event of a decree for mesne profits being made such decree must inevitably be executed against the equity of redemption of the mortgagor, it is desirable, if not absolutely necessary, that the mesne profits should be ascertained in the presence of the Receiver who has now the custody of the interest of the mortgagor as well as of the mortgagee in the mortgaged premises. The application is opposed by the Receiver. He urges that he is a stranger to the proceedings for the ascertainment of mesne profits and he contends that as he is not the representative of the judgment-debtor in that matter, it is needless to make him a party thereto. In our opinion, this contention is well-founded. It is perfectly true that when the decree for mesne profits is

made, the decree-holder may find it necessary, to proceed against the equity of redemption to enable him to realise his dues. When he finds himself in that position, if the Receiver is then found to be in possession of the mortgaged properties, the execution creditor may obtain the leave of this Court before he can attach the properties in execution, But before he arrives at that stage it is not necessary for him to bring the Receiver before the Court. It is absolutely immaterial to the Receiver, for what amount a decree for mesne profits is obtained by the petitioner against the mortgagor. The claim which the execution creditor now seeks to enforce is a purely personal claim, and the decree for mesne profits which will be made will be a personal decree against the mortgagor. It is only when in execution of the decree the mortgaged property will be sought to be attached that the Receiver will be affected and leave of the Court will be necessary. At the present stage, the Receiver is a perfect stranger in no way interested in the matter. If any other view of his position Were taken, the result would be that every Receiver appointed in a suit in respect of a property comprised within the scope of that litigation, would be liable to be drawn into a suit by any creditor of one of the parties to the litigation, a result which could not be possibly justified on any intelligible principle. The present application is obviously premature and the Rule must consequently be discharged.

2. The Receiver is entitled to the costs of this Rule. We assess the hearing fee at two gold mohurs.