

(1885) 12 CAL CK 0005
In the Calcutta High Court

Mathura Lall Bhagat

APPELLANT

Vs

Taponidi Hordanund Bharati and Another

RESPONDENT

Date of Decision : 22-12-1885

Acts Referred:

Citation : (1885) ILR (Cal) 499

Hon'ble Judges : Wilson, J;Field, J

Bench : Division Bench

Judgement

Wilson and Field, JJ.—The facts of this case sufficiently appear in the Judgment of the Court below.

2. Three points have been discussed before us. The first is the question of limitation. It has been argued that the suit is barred, because it was not brought within a year from the date of the order of the 30th June 1880. On that point we entirely agree with the lower Appellate Court. This is not a suit to set aside any order at all. It is a suit brought to enforce a right which the law gives to the plaintiff, and which right arose by virtue, among other things, of that order; but the existence of that order in full force is in no sense inconsistent with the right of the plaintiff. It is a suit governed by some one or other of the articles in the schedule to the Limitation Act. It is not necessary for us to discuss under which article it falls, because under whatever article it falls the suit is in time.

3. The second point taken before us is this, that, because in this case the defendants as to the larger part of the purchase-money were allowed to set it off against their judgment-debt instead of actually paying it into Court in coin, therefore the purchase-money never became assets of the estate of the judgment-debtor applicable to the satisfaction of the debts of those creditors who had obtained decrees and orders for execution. We are of opinion that the power given in Section 294 of the CPC is not intended to alter the substantial nature of the transaction. In a proper case, in order to prevent trouble and inconvenience, the law allows the Court to sanction a set-off instead of a payment in followed by a payment out. But the purchaser who has obtained this indulgence cannot, in

our opinion, take advantage of it so as to alter the substance of the transaction and alter the rights of other creditors.

4. Then it is argued that, assuming this to be the state of the law, the principle of distribution adopted by the Court below has been too favourable to the plaintiff. It is said, granting that as to the eight annas of the property sold, the defendants, who were both the selling creditors and the purchasers, were only entitled to share rateably with other creditors, and granting that the plaintiff under his money decree was entitled to a rateable share, there was another judgment debt as to which execution proceedings had been taken, and in respect of which allowance should be made, that is to say, the debt arising out of a decree obtained by the plaintiff in respect of his mortgage of a two annas share of the property in question, which mortgage and decree the defendants in this suit, subsequently to the transaction now in question, paid off. In other words, they claim to be allowed to deduct the money which they paid in satisfaction of that claim of the plaintiff from the amount of the purchase money in question, before the Court can say what was the amount distributable rateably among the parties concerned. This contention seems to us wholly untenable. The claim of the present plaintiff with regard to that matter was a mortgage claim in respect of two annas of the property, and he was, so far as appears, the sole mortgagee. Therefore, the present defendants, when they purchased that property upon which the plaintiff held a mortgage, and purchased it under proceedings to which the plaintiff was no party, purchased subject to the mortgage. Prima facie, therefore, when the defendants paid off that mortgage, they paid it off for their own benefit in order to clear their property of an encumbrance. What the District Judge appears to have done was this, not to allow them to deduct the whole of that amount before ascertaining what was distributable, but to allow them to reckon this judgment-debt as one of the claims in respect of which, with others, a rateable distribution was to be made. Whether he was right in doing that, and whether he may not, perhaps, have dealt with the matter on a footing too favourable to the present defendants, it is not necessary for us to consider, because there is no cross-appeal before us. It is clear, we think, that the principle on which the matter has been dealt with has not given undue advantage to the plaintiff.

5. The result is that the appeal will be dismissed with costs.