

(1896) 12 CAL CK 0010

In the Calcutta High Court

Case No : Appeal From Appellate Order No. 144 of 1896

Rai Ramani Dasi

APPELLANT

Vs

Surendra Nath Dutt

RESPONDENT

Date of Decision : 10-12-1896

Acts Referred:

Citation : (1896) 12 CAL CK 0010

Final Decision : Dismissed

Judgement

1. In this case the judgment-debtor is the appellant. He was sued for rent, and the decree-holder got a decree on the 23rd April, 1894. The tenure was advertised for sale in 1895, and the decree-holder wants to have it sold subject to a mortgage which he has against the judgment-debtor. Section 99 of the Transfer of Property Act enacts as follows :--"Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit u/s sixty-seven, and he may institute such-suit notwithstanding anything contained in the Code of Civil Procedure, Section 43."

2. It appears to us that the provisions of this section prohibit the sale of the property, though not its attachment. We therefore set aside the decision of the lower Court, and dismiss the application for sale with costs.