

(1923) 02 AHC CK 0022
In the Allahabad High Court

Raja Dutt Prasad Singh

APPELLANT

Vs

Sri Narain

RESPONDENT

Date of Decision : 28-02-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89

Citation : AIR 1923 All 503 : 74 Ind. Cas. 557

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Judgement

1. We have now before us an appeal by the decree-holder in a suit on a mortgage in which the preliminary decree for sale was passed on the 4th of March 1910 and the decree absolute for sale on the 30th of April 1915. We disposed of yesterday two appeals arising out of the execution of this final decree but the question raised in the present appeal is wholly different. It concerns the liabilities of the three judgment debtors who appear on the record as defendants, Nos. 2,4 and 5. It is admitted that both in the preliminary decree and in the final decree the liability of these defend upon was limited to a certain aggregate sum, made up of no less than six items set forth in detail in the judgment itself. The question raised by this appeal is as o the direction contained in the preliminary and in the final decree on the question of interest. The great point in favour of the decision of the Court below is that it has continued to apply the same method of calculation in the matter of accumulating interest from the date of the final decree onwards as had undoubtedly been applied in drawing up the final decree for sale. On this ground alone we are disposed to affirm the decision of the Court below, more especially as we are not prepared to say that it was anything but a fairly equitable adjudication of the rights and liabilities of the parties. If we thought it necessary to go further into the arguments which have been addressed to us, there are a good many other questions which we should have to discuss. We only think it necessary to say that our order affirming the decision of the Court below must not be understood as endorsing the very curious procedure followed in that Court over the manner in which the provisions of Order XXI, Rule

89 of the CPC have been applied in that Court. In effect, the property of the judgment debtors respondents was allowed to go to sale while an objection to the amount stated in the sale proclamation was on the file of the Execution Court and un-disposed of. The judgment debtors concerned were, therefore, allowed to use the provision of Order XXI, Rule 89 of the Civil Procedure Code, under protest, and subject to an adjudication after the sale had been held as to the amount for the recovery of which the sale ought really to have been ordered. We think it sufficient to say that this procedure was, in our opinion, irregular and that we should have felt considerable difficulty about affirming it, if the Memorandum of Appeal before us had contained a plea which explicitly challenged the right of the Execution Court to adopt that procedure. Taking this view of the case we are satisfied that the cross objections filed by the judgment debtors must fail, if only for the reason that we are very doubtful whether the Court below was really justified in either training their objection at all in the manner in which it did. As regards the pleas taken in the Memorandum of Appeal filed by the decree holder, they are covered by our finding that the method of calculation applied by the Execution Court in the matter of interest is the method which 5 was adopted in the final decree for sale for these grounds we dismiss both the appeal and the cross objections, leaving the parties to bear their Own costs in this Court.