

(1924) 04 CAL CK 0019
In the Calcutta High Court

Rash Behari Mazumdar

APPELLANT

Vs

Kasum Kumari Guha and Others

RESPONDENT

Date of Decision : 29-04-1924

Acts Referred:

Citation : AIR 1925 Cal 1145

Hon'ble Judges : M.N. Mukerji, J

Bench : Division Bench

Judgement

M.N. Mukerji, J.—The learned Munsif, in my opinion, was in error in supposing that the order of attachment of the surplus sale proceeds could not be vacated at the instance of the petitioner as the latter was not a party to the mortgage suit in the course of which the said order had been made. The application being one u/s 151, Civil P.C., invoking the inherent powers of the Court to make an order necessary for the ends of justice, the question as to the locus standi of the applicant can hardly arise. The petitioner was, no doubt, not a party to the mortgage suit, but it cannot be urged for a moment that he is not vitally interested in the order which had been passed and which he seeks to be vacated.

2. As for the merits, it is clear that by virtue of Section 73 of the Transfer of Property Act the moment a mortgaged property is transformed into money by reason of a revenue sale, the lien fastens by operation of law upon the surplus sale proceeds, It is so, on the equitable principle that the mortgagee is entitled, for the purpose of the security, to all such interests as may ho acquired in place of the mortgagor"s interest. If the mortgagor"s interest in the mortgaged property is re-vested in him in consequence of the sale being set. aside, and the mortgagor ceases to have any interest in the sale-proceeds the mortgagee is in a portion to fall back upon his original security, and has no more lien on the sale proceeds, which no longer represent the interest of the mortgagor. The fact that by the order of attachment the surplus sale proceeds had already become available to the mortgagee makes no difference; for the Court has sample powers in the exercise of its inherent jurisdiction u/s 151, Civil P.C. even to make

an order for refund Rai Charan Bhuiya and Others Vs. Debi Prosad Bhakut, : It is noteworthy that the final decree in the mortgage suit was passed on the 11th March 1921 after the title suit had already been decided on the 5th March 1921 and evidently in ignorance of the said decision.

3. The Rule, in my opinion, should be made absolute, the order of the learned Munsif, dated the 18th June 1923, set aside, and the petitioner's prayer for withdrawal of the order of attachment granted. As the opposite party have not entered appearance in this Court, no order is made as to costs.