

(1887) 03 AHC CK 0008
In the Allahabad High Court

Salig Ram

APPELLANT

Vs

Kadir Bakhsh

RESPONDENT

Date of Decision : 08-03-1887

Acts Referred:

Citation : (1887) ILR (All) 474

Hon'ble Judges : Mahmood, J; John Edge, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Edge, Kt., C.J.—The plaintiff, who was the mortgagee of the house in question in this suit, brought an action against the mortgagors for recovery of a sum of money by enforcement of lien against the house, and obtained a decree, in execution of which that house was advertized for sale. The defendant, who claimed to have purchased the house from the same mortgagors raised an objection, and the result was that his objection was allowed, and the plaintiff was compelled to bring the present suit.

2. In this case it has been found by both the lower Courts that the alleged sale-deed of the defendant was fraudulent and collusive. The defendant contends that, notwithstanding this finding, he is entitled to put the plaintiff to the proof of his title; or, in other words, that the plaintiff should have proved his mortgage-deed as against him. It is true that he was no party to the decree obtained against the mortgagor, but the basis of his title to claim the property has been found to be a mere nullity, and therefore the plaintiff is entitled to succeed on the basis of the decree, which stands unimpeached.

3. The plaintiff also claimed costs incurred by him in the execution-department on the defendant's objection. These costs were decreed by the Court below. I have no hesitation in holding what my brother MAHMOOD has held in the case of Makram Das v. Ajudhia I. L. R. All. 452 that where a Court has jurisdiction and orders or refuses costs, the parties cannot bring a separate action for such costs.

The plaintiff is, therefore, not entitled to recover from the defendant the costs incurred by him in the execution-department, and to this extent the defendant's appeal will be allowed, and the decree of the lower Court will be modified, the rest of the decree being confirmed. The appellant will bear all costs.

Mahmood, J.

4. I entirely agree.