

(1915) 05 CAL CK 0006
In the Calcutta High Court

Sanatan Chakravarti alias Amrita Lal Chakravarti and Another	APPELLANT
Vs	
Srimati Kauri Mani Dasi and Others	RESPONDENT

Date of Decision : 12-05-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : 29 Ind. Cas. 925

Hon'ble Judges : D. Chatterjee, J;Chapman, J

Bench : Division Bench

Judgement

1. The admitted facts of the case are that one Kala Chand Naskar died leaving three sons, Gopinath, Hem and Uma Charan and a widow, Muktakeshi. Uma Charan was a minor at the time. Gopinath Hem and Muktakeshi on behalf of the minor mortgaged 16 annas of certain property to defendant No. 5. Defendant No. 5 sold the mortgage to the grandfather of the appellants, defendants Nos. 1, 2 and 3. Jadunath, the father of the appellants, brought a suit on the mortgage against Hem alone, as Muktakeshi, Gopinath and Uma Charan were all dead at the time. It appears, however, that Gopinath left a widow, who is the plaintiff and who was not made a party to, the mortgage suit. A decree was made in favour of Jadunath, and Jadunath in execution of his decree purchased the mortgaged property. One Gopal Chandra Ghose having obtained a money-decree against Jadunath sold the right, title and interest of Jadunath in execution and purchased it himself. Gopal Chandra then sold the right so purchased by him to defendant No. 7, Hari Das, and defendant No. 7 let out the property to Jadunath, the father of the appellants. After this, the widow of Gopinath brought a suit for recovery of an 8-annas share to which her husband was entitled. Upon the admitted facts of the case, the plaintiff was not bound by the mortgage-decree. She was, therefore, entitled to redeem the mortgage of Jadunath which would be vested in defendant No. 7; and the Court of first instance made a decree in favour of the plaintiff for possession of her 8-annas share upon redemption. The order was. The plaintiff be put in joint possession of the property to the extent of her half share in it, on her payment of Rs. 200, towards the redemption of the mortgage

as found in the judgment, to defendants Nos, 1--3 and defendant Haridas Ghose. After the redemption either party may sue for partition." There was an appeal to the learned District Judge by the plaintiff and we understand that there was also a cross-appeal by the appellants. The learned Judge in dealing with the appeal has made a mistake with regard to the law applicable to the case. He has held that the purchaser in execution of the mortgage-decree purchased the right, title and interest of the judgment-debtor Hem Chandra and nothing else.

2. There is no dispute in this Court that that judgment is not right. The point, however, which is disputed is that the appellants who were the lessees of Hari Das have not the same rights as Hari Charan had and as Hari Das has not appealed, the decree as made by the Court of Appeal below, that the plaintiff should recover her 8-annas share of the property unconditionally, ought to remain, subject in future to the working out of any rights which Hari Das or anybody claiming under him may have. Ordinarily that may be the right mode of looking at the facts of the case. This, however, is a case in which the plaintiff wants to recover the property which, upon the finding, was mortgaged by her husband for the debts for which her husband's property in her hands would be justly liable. To allow her, therefore, to recover her property without any condition would not be equitable. At the same time the appellants claiming merely as lessees would not be entitled to the same rights as Hari Das. But Hari Das is a party respondent before us, and under Order XLI, Rule 33, of the Civil Procedure Code, we can pass a decree that ought to be passed. We think the most proper decree in this case would be something like what was passed by the learned Munsif in this case, that is, that Hari Das must be redeemed, and that the plaintiff will recover possession upon payment of Rs. 200 to Hari Das or anybody that may establish a title to the rights of Hari Charan.

3. It is alleged that Hari Charan has executed a conveyance in favour of the appellants pending this appeal. But that document is not before us, and we leave that to be worked out during the execution of the appellants' claim under their conveyance from Hari Das.

4. In the circumstances of the case, we make no order as to the costs in this appeal.