

(1942) 05 CAL CK 0008
In the Calcutta High Court
Case No : Civil Revision No. 1349 of 1941

Sita Nath Nandi and Others

APPELLANT

Vs

Mangal Chandra Aich

RESPONDENT

Date of Decision : 14-05-1942

Acts Referred:

Citation : (1942) 05 CAL CK 0008

Judgement

Henderson, J.—This Rule has been obtained by the judgment-debtors and is concerned with an application made by them under sec. 36 of the Bengal Money-Lenders Act. The point for determination is whether the case comes within the decision of a Division Bench of this Court in the case of Naresh Chandra Gupta v. Lal Mamud Bhuiya 46 C.W.N. 457 (1942). In that decision the learned Judges pointed out that a final decree in a mortgage suit is fully satisfied when the mortgaged property is brought to sale. They lay down that in such cases the Petitioner may be entitled to have the personal decree re-opened, although the final decree cannot be touched. The decision of the learned Munsif has proceeded upon these lines.

2. In the present case the Court did not proceed properly under the provision of Or. 34, C. P.C. There was no final decree followed by a personal decree. In stead of doing that the Court passed a composite decree. The Opposite Party is now executing that composite decree. As there is only one decree, there is no doubt that the Petitioners are entitled to have it re-opened. It is really impossible to split it into two as the learned Munsif has done.

3. The Rule is accordingly made absolute and the Munsif is directed to allow the Petitioners' application for review and pass a new decree in accordance with law. I make no order as to costs.