

(1927) 08 CAL CK 0019
In the Calcutta High Court

Surendra Nath Dutta and Others

APPELLANT

Vs

Tripura Pada Bhattacharjee and Others

RESPONDENT

Date of Decision : 15-08-1927

Acts Referred:

Citation : AIR 1928 Cal 215

Hon'ble Judges : S.C. Mallik, J;Page, J

Bench : Full Bench

Judgement

Page, J.—This is an application by the respondents in an appeal that the appeal be dismissed as against them and for incidental relief. The respondents are the auction-purchaser and the decree-holder. The decree was obtained against the person who presented the appeal in the suit. In execution of that decree the property in dispute was sold at an auction sale. After the sale, the judgment-debtor applied to set aside the sale under Order 21, Rule 90. That application was dismissed. From that application an appeal was preferred to the High Court. During the pendency of the appeal the judgment-debtor was adjudicated a bankrupt. Thereupon the Official Assignee elected not to proceed with the appeal. Hence the present application. Now, the judgment-debtor having been adjudicated an insolvent pending the appeal ceased to have any interest in the matter, and his assets passed to the Official Assignee. The Official Assignee having elected not to proceed with the appeal the respondents are entitled to have the appeal dismissed.

2. A petition has been presented by a party who claims to be entitled to the property in dispute under a mortgage executed in his favour by the judgment-debtor in 1922. Throughout the whole of these proceedings until the present application was filed, this claimant has taken no steps to vindicate his rights. He now seeks for an order that he may be added or substituted for the insolvent or the Official Assignee as appellant in the present appeal. In my opinion, such an application is misconceived, and the petitioner is not entitled to the order which he claims. Whatever rights he has or any have had, he has elected not to

enforce. He is at liberty, of course, to take such steps as may now be open to him to vindicate his rights. But after the adjudication and after the refusal of the Official Assignee to prosecute the appeal, in my opinion, he is entitled to proceed with the appeal. The result is that the appeal will stand dismissed with costs, the costs of and incidental to the appeal to be a claim against the estate of the insolvent. The petition is dismissed with costs. The hearing-fee in respect of the appeal is assessed at two gold mohurs for each respondent, and the hearing-fee of the petition on behalf of the Karnani Industrial Bank, Ltd. is two gold mohurs in favour of each of the opposite parties. The unspent balance of the paper-book costs, deposited by the respondents, should be refunded to them.

S.C. Mallik, J.

3. I agree.