
(1942) 06 CAL CK 0022
In the Calcutta High Court
Case No : Civil Revision No. 512 of 1942

Tamluk Loan Office Co. Ltd.

APPELLANT

Vs

Ganga Narayan Kar and Others

RESPONDENT

Date of Decision : 22-06-1942

Acts Referred:

Citation : (1942) 06 CAL CK 0022

Judgement

Mukherjea, J.—Having heard the learned Advocates on both sides, we are of the opinion that this Rule should be made absolute in part. As was laid down by this Court in Naresh Chandra Gupta v. Lal Mamud Bhuiya 46 C.W.N. 457 (1942), neither the preliminary nor the final mortgage decrees could be re-opened in the circumstances of the present case, -- the final decree having been fully satisfied long before the first day of January, 1939. The only decree that can still be reopened and scaled down is the personal decree made under Or. 34, r. 6 of the Code of Civil Procedure, an execution proceeding in connection with which was actually pending after the first day of January, 1939.

2. The result, therefore, is that we set aside the order of the Court below, and send this case back to that Court in order that the personal decree may be re-opened in accordance with the directions given in the judgment of this Court mentioned above. We desire to point out that on the personal decree being re-opened, the Court shall order restoration to the judgment-debtor of the properties acquired by the decree-holder in execution of the same which are actually in possession of the decree-holder at the date when the decree is re-opened. There is no provision, however, in the Bengal Money-Lenders Act for giving mesne profits to the judgment-debtor in respect of such property for the period that it was in possession of the decree-holder. The direction given by the Court below for investigation of the mesne profits either with regard to the property sold in execution of the personal decree or of the original mortgage decree must, therefore, be set aside.

3. This Rule is accordingly allowed in part, and the judgment of the Court below

set aside. There will be no order as to costs.

Sen, J.

I agree.