
(1878) 06 AHC CK 0002

Allahabad High Court

Case No: None

Paras Ram

APPELLANT

Vs

Manik Singh

RESPONDENT

Date of Decision: June 3, 1878

Citation: (1875) ILR (All) 727

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Judgement

Pearson, J.

The sale was made on the 20th June 1876, in execution of the defendant-appellant's decree dated 15th January 1876, which declared a lien created by a bond, dated 17th July 1873, in pursuance of an attachment made by him on 13th April 1876, on which date the plaintiff, respondent, also attached the same property in execution of his decree dated 21st January 1876, which declared a lien dated 28th September 1875. Both Courts are agreed that it was proper that the defendant-appellant's decree above-mentioned should first be discharged out of the sale-proceeds. Defendant-appellant had another decree, dated 11th November 1875, declaring a lien on the same property created by a bond dated 27th October 1874; the Court of First Instance held that this decree should also be discharged out of the surplus sale-proceeds in preference to that of the plaintiff--respondent; the lower Appellate Court held otherwise for the reason stated in its judgment, viz., that neither attachment nor sale had been made under the decree of 11th November 1875.

2. But it appears that on 2nd June 1876, the defendant preferred a petition to the Court praying that, as the property on which his decree of 11th November 1875, declared his lien was about to be sold in execution of his decree, dated 15th January 1876, the surplus sale-proceeds might be attached for the purpose of being applied to the satisfaction of the decree of 11th November 1875, and that an order was passed on 3rd June 1876, in accordance with the petition.

3. Under the circumstances we are of opinion that the decree-holder of 11th November 1875 was entitled to share in the sale-proceeds under the provisions of Section 271 of Act VIII of 1859, as one who had prior to an order for distribution, before the sale even, taken out execution of his decree against the same judgment-debtor and not obtained satisfaction thereof; and as his lien as well as the decree which declared it were prior in date to the lien and decree held by the plaintiff, was entitled to share before him.

4. We therefore decree the appeal with costs, modifying the lower Appellate Court's decree so far as it modified that of the Court of First Instance, and restoring the latter in its entirety.