

(1879) 07 AHC CK 0004

Allahabad High Court

Case No: None

Thamman Singh

APPELLANT

Vs

Ganga Ram and
Others

RESPONDENT

Date of Decision: July 8, 1879

Citation: (1880) ILR (All) 345

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

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Straight, J.

The simple point in this case is whether the decree obtained by the defendant Ganga Bam against his judgment-debtor is to be regarded as one for enforcement of lien or simply for money. It is true that, in the claim itself, the hypothecated property is detailed and the property itself is impleaded as a defendant, but the decree is quite silent about it and thus disposes of the suit: "Decree for plaintiff in favour of his claim, and costs against defendant." It was urged for the respondents, auction-purchasers, that a liberal construction should be placed upon the terms of the decree, and that it may reasonably be read as carrying relief against the property hypothecated. We think this argument should not be allowed to influence us and is inapplicable, where the Legislature has in the most specific terms directed how a decree should be shaped and what details it should contain.

(i)--The number of the suit,

(ii)--Names and description of parties,

(iii)--Particulars of the claim.

(iv)--Shall specify clearly the relief granted or the determination of the suit.

(v)--The amount of costs incurred in the suit, and by what parties and in what proportion they are to be paid.

2. It is admitted by the respondents that the decree in this case is vague and defective; but they urge that read by the light of the claim, its intention is obvious, and that it may fairly be interpreted as being one for the enforcement of lien. There are certain broad rules by which construction of Acts is guided, that are perfectly well known and recognised, but it does not appear to us that they could be applied here, nor do we think that we have any right to treat this as a question of construction at all. The Section 206 of Act X of 1877 has, in the details already set out, laid down in the most explicit way, what the contents of a decree are to be: "Shall specify clearly the relief granted," and if there be an omission in the decree so that the relief given by it does not in terms go to the extent asked, we do not think it is part of the duty of this Court, or, indeed, of any other, to import words for the purpose of stretching its operation. The Court making the decree must be presumed to have expressed the relief it was prepared to give, and the words "Decree for plaintiff in favour of his claim and costs against defendant" have, in our judgment, nothing about them specifying clearly, as required by the Act, any relief in the shape of enforcement of lien against property [3433 hypothecated. The argument for elasticity in construction of the terms of a decree urged by the respondent would, if admitted, be productive of the greatest confusion and inconvenience, and involve a continued conflict of decisions. We must take the decrees as we find them, and not embark into speculation as to what was the intention of the Court passing the decree. Under these circumstances we decree the appeal and plaintiff's claim with costs.