

(1941) 03 CAL CK 0001

Calcutta High Court

Case No: Re: Suit No. 1144 of 1937

Hrishikesh Banerjee

APPELLANT

Vs

Jitendra Nath Roy and Others

RESPONDENT

Date of Decision: March 20, 1941

Final Decision: Dismissed

Judgement

Edgley, J.

The Petitioner in this case is the purchaser of the equity of redemption in respect of certain property which was mortgaged to the Opposite Party on February 27th, 1930, for Rs. 58,000. Admittedly the Petitioner purchased the equity of redemption on June 5th, 1935, for a sum of Rs. 1,000, and he now claims certain reliefs under the Money-Lenders Act as the successor-in-interest of the original borrower. In this connection, the Petitioner relies on sec. 2 (2) of the Bengal Money-Lenders Act, 1940, which is in the following terms:

"Borrower" means a person to whom a loan is advanced and includes a successor-in-interest or surety.

2. Having regard to the general scheme of the Act, it appears to have been the intention of the legislature to provide relief to borrowers as regards money-lending transactions and to the representatives of such borrowers on whom liability in respect of the debt might subsequently devolve, for instance, after the death of the original borrower. I do not think however that the expression "successor-in-interest" can be construed to include a person such as the Petitioner in this case, who appears to have acquired the equity of redemption in the mortgaged property in a transaction of a speculative character. Admittedly the remedy of the lender against the Petitioner would be confined to the mortgaged property, and he could not, for instance, obtain a personal decree against the Petitioner if he failed to realise in full the amount of his claim from the sale of the property which was mortgaged on February 27th, 1930.

3. In my opinion, the expression "successor-in-interest" might be taken to include an executor or persons who had succeeded to the original borrower's property by inheritance who would be liable to the extent of the borrower's assets which had come into their hands, but I do not think it was the intention of the legislature that it should include a purchaser of the equity of redemption, such as the Petitioner in this case. This application must, therefore, be dismissed with costs.