

(1922) 11 CAL CK 0002**Calcutta High Court****Case No:** None

The Kushtia Loan Office Limited

APPELLANT

Vs

Annada Charan Chakravarty and
Others

RESPONDENT

Date of Decision: Nov. 23, 1922**Citation:** 77 Ind. Cas. 26**Hon'ble Judges:** Walmsley, J; B.B. Ghose, J**Bench:** Division Bench**Judgement**

B.B. Ghose, J.

The plaintiffs are the appellants in this case. The suit was brought for enforcing a mortgage executed by the defendants Nos. 1, 2 and 3 in favour of the plaintiff Company, in July 1913. Twenty-four items of property were mortgaged. Out of these, two items were acquired under the Land Acquisition Act in 1915 and the amount of compensation awarded was less than the mortgaged money. The plaintiffs were entitled as mortgagees to take the whole amount of compensation in satisfaction of their mortgage. But the mortgagors were not willing that the entire amount should be taken by the mortgagees in payment of that debt. The plaintiff Company had two unsecured debts due from the mortgagors. What the mortgagors wanted was that the compensation money should be appropriated in full payment of the unsecured debts and a portion of it should be taken by the mortgagees towards part satisfaction of the mortgage-debt. The mortgagees agreed to that and the unsecured debts were paid off with a portion of the compensation money. In 1916, the contesting defendants No. 4, 5, 6, 7 and 10 with some other defendants purchased the equity of redemption in some of the mortgaged properties subject to the mortgage and they have been impleaded in this suit as such purchasers. Their objection was that the mortgagees were bound to give credit for the entire amount of the compensation money in reduction of the mortgage debt. The Court of first instance made a decree in favour of the plaintiff for the full amount of the "mortgage-money due" on appeal by the contesting defendants, the power

Appellate Court has varied that decree and dissected that Rs.2 money due on the mortgage should be reduced by allowing credit for the amount that was paid in satisfaction of the unsecured debts due to the mortgagees. This view in my opinion is erroneous portion of the property had been acquired under the Land Acquired by Act before the contesting defendants had acquired any interest in the property. Reliance any has been pieced by the learned Vakil for the respondents on the principle that where the mortgagee receives any money by means or virtue of a security, it must be applied in reductions of the mortgage-debt. But that principle has no application here. Before any third person had acquired any interest" in any portion of the mortgaged property, the mortgagees were entitled, if they so desired, to pay the whole amount of the compensation money to the mortgagors. They would thereby have reduced their own security and the interest of no other person would have been affected in any way. What happened in this case partly amounts to this that the mortgagees made over a part of the compensation money to the mortgagors and the mortgagors paid it back to the mortgagees in satisfaction of their unsecured debt. As this happened before the contesting defendants had acquired any interest in the mortgaged property, they have no right to complain. The mortgagors themselves could not have after entering into the arrangement referred to above claimed that the mortgagees were bound to give credit for the amount in satisfaction of the mortgagees debt which they had themselves asked the mortgagees to appropriate in satisfaction of some other debt. The appeal must, therefore, be allowed the judgment and decree of the lower Appellate Court set aside and those of the First Court restored with costs in all Courts. As the period of redemption fixed by the Court of first instance has expired, that period will be extended by three months from this date.

Walmsley, J.

2. I agree.