

(1879) 03 CAL CK 0002

Calcutta High Court

Case No: None

Deolie Chand and
Others

APPELLANT

Vs

Nirban Singh

RESPONDENT

Date of Decision: March 25, 1879

Citation: (1880) ILR (Cal) 253

Hon'ble Judges: Broughton, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

There can be no doubt that at the date of the mortgage there was a two-annas share held by the decree-holder, which has subsequently passed to the judgment-debtors, and which obviously could not be subject to the mortgage at the date thereof. The contract of the judgment-debtor was to hold fourteen-annas subject to a mortgage for the repayment of the debt due to the appellant. So long as he had only a twelve-annas share in his possession the mortgage security was of necessity reduced to that amount; but if at any time he became owner of fourteen-annas the creditor had an equitable right to demand that that fourteen-annas should be held subject to his mortgage. This principle has been distinctly recognized in the Specific Relief Act, and it appears to us that there can be no doubt that the decree-holder is equitably entitled to have security as far as it is possible for the debtor to give it, up to the extent of the fourteen-annas for which he contracted.

2. We, therefore, think that the two-annas share, in respect of which there has been a dispute in the Court below, is properly saleable in execution of the appellant's decree, if on taking an account of that which has been realized it is found that there is an outstanding debt.

3. The appeal must, therefore, be allowed with costs.