
(1868) 07 CAL CK 0013

Calcutta High Court

Case No: Special Appeal No. 327 of 1868

Brajaraj Kisori Dasi

APPELLANT

Vs

Mohammed Salem

RESPONDENT

Date of Decision: July 13, 1868

Final Decision: Dismissed

Judgement

E. Jackson, J.

This was a suit brought by a purchaser of the rights and interests of a mortgagor at a sale in execution of a decree, which declared the mortgaged property liable for the mortgage debt, to oust the defendant, a putnidar, who had obtained a putni pottah from the mortgagor, subsequent to the mortgage, and in violation of the conditions contained in the mortgage-deed, forbidding alienation of any sort. The Lower Appellate Court has decreed the claim. I am of opinion that that Court was right in law. The purchaser did not, under these circumstances, purchase only the rights and interests of the mortgagor subject to all alienations made by him subsequent to the mortgage. The case is exactly in point with the case, Rajnarayan Singh v. Shera Meah (7 W.R., 67), and is not, I think, opposed, as it has been argued it is, to that of Erskine v. Dhankrishna Sein (8 W.R., 292), inasmuch as there is nothing in that decision to show that the decree, in execution of which the sale took place, was more than a money-decree. It is said that, at the time of the sale, notice of the putni was given, and that the decree-holder did not object. There is nothing to show that he assented to the sale being subject to the putni, and the mere notice, which was given, was simply to put purchasers on their guard, and to intimate to them that the putni title was set up in the property. It can have, I think, no effect on our decision determining whether the putnidar has any right or title to hold possession of his putni against the purchaser.

2. I would dismiss the appeal with costs.

Kemp, J.

I concur. It appears to me that the plaintiff, special respondent, the purchaser, bought the rights and interests of the judgment-debtor as they stood at the time of the hypothecation, and not as they stood at the time of the sale. The special appeal is dismissed with costs.