
(1875) 05 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 346 of 1874

Lalah Ameer Chand

APPELLANT

Vs

Nathoo Sahoo

RESPONDENT

Date of Decision: May 6, 1875

Judgement

Macpherson, Officiating C.J.

1. We think that the judgment of the lower Appellate Court ought to be affirmed. The point in issue has been expressly decided by the High Court of the North-West Provinces in the case of Mahtab Singh v. Misree Lall 2 Agra H.C., 88. In that case two mouzahs were mortgaged together, and the equity of redemption in one was subsequently sold in execution of a decree held by a stranger and was purchased by the mortgagee; and the equity of redemption in the other was in like manner sold under another decree and purchased by a third party; and it was held that the latter might redeem the property he had purchased on paying a proportionate part of the mortgage debt. We agree in the observations made in the judgment of the Court that "a mortgagee is entitled to say to each of several persons who have [succeeded to the mortgagor's interest, that he shall not be entitled to redeem a part of the property on payment of part of the debt, because the whole and every part of the land mortgaged is liable for the whole debt. But it does not follow from this that a mortgagee who has acquired, by purchase, a part of the mortgagor's rights and interests, is entitled to throw the whole burden of the mortgage debt on the remaining portion of the equity of redemption in the hands of one who has purchased it at a sale in execution of a decree against the mortgagor. Each has bought subject to a proportionate share of the burden, and must discharge it. We see no reason why the equitable rule applied in that case should not be enforced as between the parties now before us,--the more especially as the person who purchased at the last sale and who complains of the decree which has been made is the mortgagee himself.

2. We therefore affirm the decree appealed against and dismiss this appeal with costs.