

(1925) 12 CAL CK 0045

Calcutta High Court

Case No: None

Moulavi Abul Khairat
Mahommad (Ahamad in
Vakalatnama)

APPELLANT

Vs

Hrishikesh Das and Others

RESPONDENT

Date of Decision: Dec. 12, 1925

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 90, Order 40 Rule 1(a)

Citation: 95 Ind. Cas. 6

Hon'ble Judges: Cuming, J; B. B. Ghose, J

Bench: Division Bench

Judgement

Ghose, J.

This is an appeal against an order of the Subordinate Judge, First Court, Dacca, appointing a Receiver with regard to certain mortgaged properties. The mortgagee brought a suit on his mortgage on the 11th March 1922. The principal amount was Rs. 2,15,000. The interest due at the time was Rs. 1,21,000. The final decree on the mortgage was made on the 17th November 1923; and execution was applied for on the 5th December 1923. Several objections were taken to the legality of the execution proceedings; and the case came up before this Court more than once. Ultimately the date of sale was fixed for the 1st August 1924. On the 26th of May preceding the mortgagee made an application for the appointment of a Receiver of the mortgaged properties. A Receiver was appointed on the 30th July 1924. The sale was held on the 1st of August following. It appears that the bulk of the mortgaged properties was purchased by the mortgagee decree-holder and there were other purchasers of several other properties. The Receiver furnished the security demanded from him on the 4th August and subsequently took possession of the mortgaged properties. The judgment-debtor filed an application for setting aside the sale under Order XXI, Rule 90, C. P. C., and owing to that the sale has not yet

been confirmed. The Subordinate Judge took into consideration the fact that the principal of the mortgage-money was a considerable amount and although the income of the property was Rs. 10,000 according to the decree-holder and Rs. 15,000 odd according to the judgment-debtor no part of the interest which amounted to Rs. 21,000 per year was paid for nine years and that as the result of this the mortgage-money had come up to Rs. 3,81,000. The Subordinate Judge was also of opinion that the decretal amount would exceed the value of the property was likely to fetch at an auction-sale, and that the judgment-debtor did not intentionally pay anything towards the principal and interest of the mortgage-debt. He, therefore, held it was just and convenient that a Receiver should be appointed specially as the defendant was likely to remain in possession of the properties for a considerable time before the sale was confirmed, and made an order for the appointment of a Receiver. The Receiver has, as already stated, taken possession of the properties.

2. The first ground that is urged on behalf of the appellant is that the Subordinate Judge had no jurisdiction to make the order of appointment of a Receiver as the property had already been sold in execution of the mortgage decree. Reference has been made to Order XL, Rule 1, Clause (a) and it is contended that although the Court is authorised to appoint a Receiver after decree it has no power to do so after the decree has been satisfied. It is quite true that when a decree has been finally satisfied the Court cannot appoint a Receiver and it can have no occasion to do so. But in the present case the mortgage suit has not really terminated. It is well established that a mortgage suit is considered to be pending even after the final decree until the mortgage money is realised. In the present case it cannot be said that the mortgage money had been realised when the proceedings relating to the sale are still continuing. The Court, therefore, had jurisdiction to make an order for the appointment of a Receiver and to take possession of the properties from the custody of the mortgagor.

3. It is next urged on behalf of the appellant that the order that the Subordinate Judge has made is not just and convenient having regard to the fact that the appellant might have sold the properties at a higher value by private treaty than what it might fetch at the execution sale. Having regard, however, to the facts found by the Subordinate Judge there cannot be any doubt that this is one of the cases in which it is eminently proper that a Receiver should be appointed.

4. On these grounds the appeal is dismissed with costs. Hearing fee ten gold mohurs.

Cuming, J.

5. I agree.