courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 07/11/2025

(1928) 03 CAL CK 0016

Calcutta High Court

Case No: None

Mohunlal Kundu	APPELLANT
Vs	
Nanibala Dabee and Others	RESPONDENT

Date of Decision: March 30, 1928

Acts Referred:

- Transfer of Property Act, 1882 - Section 91

Citation: 118 Ind. Cas. 887

Hon'ble Judges: Pearson, J

Bench: Single Bench

Judgement

Pearson, J.
The applicant is the purchaser of certain property at a Registrar''s sale, and seeks to have the sale set aside and the deposit refunded.

2. The property in question is No. 48 5, Boloram Dey Street. This was purchased in September, 1912, in the name of one Nanibala Dabi, the wife of Mani Haldar On 22nd May, 1922, Mani Haldar and Nanibala borrowed moneys from plaintiff on mortgage of the property. On 10th June-1923, Mani borrowed certain money from one Durlava Sett upon a promissory note. This debt was assigned by Durlava Sett to one Satya Srimani who obtained a decree against Mani Haldar on 28th August, 1924, in suit No 2106 of 1924. On 8th September, 1924, Satya Srimani in execution obtained an order for attachment of this property, and on 11th September. 1924, the Sheriff attached the property. On 8th November, 1924, Nanibala instituted claim proceedings.

3. On 16th November, 1925, the plaintiff filed a suit on the mortgage.

4. On 12th January, 1926, Nanibala''s claim was dismissed. The preliminary decree in the mortgage suit was on 22nd March, 1926, and the final decree on 27th July, 1927. The property was sold to the applicant on 18th February, 1928, at the Registrar''s sale for Rs.

18,600.

5. After the purchase an abstract of title was submitted, and requisitions on title were sent to plaintiff"s attorney, when the claim proceedings and attachment came to light. It appeared that the attachment was prior to the institution of the mortgage suit but the plaintiff in the mortgage suit had no knowledge of it and the attaching creditor was not made a party, although u/s 91, Transfer of Property Act. he is entitled to redeem, and under Order XXXLV, Rule 1 all persons having an interest in the right of redemption must be joined as parties. Consequently it is said that the title is bad and the purchaser entitled to reject it, because the attaching creditor can at any time come in and redeem. To this it is said that the only reason for setting aside a sale under Order XXI, Rule 91 of the Code is that the judgment debtor had no saleable interest in the property, and that Order XXXIV, Rule 1 is subject to the other provisions of the CPC including those that a suit is not to be dismissed because of a non-joinder of parties: see Har Chandra Roy v. Mohammad Hasim 66 Ind. Cas. 312 : 25 C.W.N. 594. To which is added the argument that he is a bona fide purchaser and cannot be disturbed, so that he has suffered no prejudice: Rewa Mahton v. Ram Kishen Singh 14 C. 18 : 13 I.A. 106 : 4 Sar. P.C.J. 746

6. The sale, however, was held not under the CPC but under Chap. XXVII of the Rules and the conditions of sale framed thereunder. These are the conditions under which the purchase was made and the purchaser is entitled to refuse if he is not given a clear title. If there is an attachment subsisting from before suit giving the creditor a right of redemption which fact is only disclosed after purchase, I think the purchaser is entitled to reject the title and have the sale set aside and his deposit returned. I make the order in terms of the summons.