

(1881) 02 CAL CK 0012

Calcutta High Court

Case No: None

Surbomangala Dabi
and Another

APPELLANT

Vs

Goluk Chunder
Mahinta and Others

RESPONDENT

Date of Decision: Feb. 11, 1881

Citation: (1881) ILR (Cal) 711

Hon'ble Judges: McDonell, J; Field, J

Bench: Division Bench

Judgement

McDonell, J.

We think that the order of the Subordinate Judge in this case ought not to be interfered with, though we do not agree with the reasons upon which he has based his decision. The property, Bazzapti Mehal Kulliar Chur, belonged to the Judgment-debtors. They mortgaged it to one Kalachand Mahinta. Kalachand brought a suit upon the mortgage-bond and obtained a decree, which was a personal decree against the judgment-debtors, and also a decree against the mortgaged property. Meanwhile the mortgaged property was brought to sale under the provisions of Section 16 of Beng. Act VII of 1868. That sale was in all respects the same as a sale in execution under the Code of Civil Procedure; in other words, it was a sale of the right, title, and interest of the judgment-debtors. The right, title, and interest of the judgement-debtors was, therefore, the equity of redemption. The sale under Beng. Act VII 1868 took place on the 26th of July 1878; and the appellants in the case became, either directly or through a mesne conveyance the purchase of the interest which passed by this sale.

2. We are satisfied upon the facts, although the property was purchased in the name of a lady, that the appellants in the present were the real purchasers That being so, the appellants, on the The 1st of September 1878 purchased a moiety of the mortgage-decree obtained by kalachand and which at that time was unexecuted.

We may observe that in our opinion they were in the same position as purchasers of moiety as if they had purchased the whole decree. Meanwhile a sum of money the surplus sale-proceeds of the sale under Beng. Act VII of 1868, was lying in deposit in the collectorate; and the appellants now seek to execute the decree purchased by them against those sale-proceeds. The Subordinate Judge has decided that they are not entitled to do this, and he relies upon the cases of *Byjonath sahoj v. Doolhun Bisvanath Kooer* (24 W. R. 83), *Lalla Mitterjeet Singh v. scott* (17 W. R. 62),-which were decided upon a principle not directly applicable to the present case. The simple aspect of this case is as follow The appellant purchased the property subject to the mortgage lien. Whether notice of the mortgage was or was not very material all that could have been sold was the right, title and interest of the judgment debtors and that [714] right title and interest seeing that the property had been mortgaged consisted merely of the equity of redemption. If the purchasers at that sale omitted to make proper enquiries and so ascertain the existence of the, mortgage lien such laches will not alter the effect of the sale Having then purchased the equity of redemption, the appelants next bought in the mortgage lien and to our minds the effect of this was that appellant became entitled to hold the property discharged from To lien but they contend that they are entitled to something more. They seek to execute the mortgage-decree against against the surplus sale-proceeds, which must be taken to represent the value of the equity of redemption; that is, having purchased and the and paid for the equity of redemption and the mortgage lien, they now desire not only to have the unincumbered property, but also to get back the whole of the price which they have paid for the equity of redemption.

3. We think that they cannot be allowed to do this.

4. Under these circumstances, we think that so much of the order of the Subordinate Judge as directs the surplus sale not to be taken out until the further orders of the Court, which is in fact an attachment of these sale-proceeds, until the judgment-debtors have Proceeded against the property must be expunged in other respects the order of the Subordinate judge will be confirmed.