
(1870) 04 CAL CK 0007

Calcutta High Court

Case No: Application for Review in Appeal 8 of 1869

Shahazadi Hajra
Begum

APPELLANT

Vs

Khaja Hossein Ali Khan

RESPONDENT

Date of Decision: April 7, 1870

Judgement

Sir Barnes Peacock, Kt., C.J.

Raised no objection to the hearing of these arguments, although the first had been argued before in appeal, and the second had not, but simply delivered a judgment supporting the previous decision. He said:--

.....

Even if the talook had been sold under the mortgage, it appears to me that the heirs at law would not be entitled to the surplus proceeds.

2. The talook was sold under Regulation VIII of 1819 for the purpose of realizing rent due for it.

3. . . . The sale did not take place under the Mahomedan law, and it appears to me that, when the mortgage was satisfied out of the surplus proceeds of the sale, the remainder of the surplus proceeds belonged to the matwalli under the endowment. The plaintiff's mortgage was paid off out of the surplus proceeds, which were realized for the arrears of rent, and it appears to me that the surplus did not belong to the heirs-at-law of the endower, but to the person who, but for the "sale for arrears of rent, would be entitled to it. For these reasons I think, this application should be rejected with costs."

Jackson, J.

Concurred in rejecting the application for review. In the course of his judgment, he observed:--"I also think, whether the real point in the case was correctly stated by the Division Bench or not, that it is quite clear that the other points on which the appropriation

of the "waqf" was impugned were not argued or brought before the learned Judges, and that those points must consequently be excluded from our consideration in this review. I desire only to add that, in hearing the argument of the learned counsel to-day, on a point which was fully argued before us, on which we pronounced our deliberate opinion, I in no way resile from the opinion which I recently expressed in a case of review which was decided by me and Mr. Justice Markby; for in the first place, there are one or two points of difficulty which in my opinion made it desirable that argument should be heard; and in the next place, I have not thought it convenient to raise before the Court, constituted, as it now is, a point of some difficulty and importance unquestionably, and on which the learned Chief Justice has not hitherto expressed a decided opinion."