

(1874) 01 CAL CK 0001

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 278 of 1873

Kheroda Mayi Dasi

APPELLANT

Vs

Golam Abardari

RESPONDENT

Date of Decision: Jan. 13, 1874

Judgement

Markby, J.

Now so far as the judgment of the Judge set aside that part of the Munsif's order which relates to the defaulting purchaser, we think he was right, because he is not before the Court, and we have really nothing whatever to do with the defaulting purchaser in this case. The question is entirely between the judgment-debtor and the judgment-creditor, and the point which we have to decide is whether in consequence of what took place on the former sale, the judgment-creditor is debarred from proceeding upon his decree against any other property of the judgment-debtor than that originally sold. The District Judge says that "the law is explicit that the difference between the first and the second sales is leviable from the defaulting purchaser." So far the judgment of the District Judge is correct. Under s. 254 of the CPC it is quite true that the difference between the first and second sales is leviable from the defaulting purchaser, but, as I have already pointed out, this is a matter with which we have nothing to do in this case. But the District Judge then goes on to say that "the decision in Joobraj Singh v. Gour Buksh Lal 7 W.R., 110 lays down that the debtor is entitled to credit for the amount bid at the first sale." It is on that point that the District Judge has mistaken the law. The law itself nowhere says what the District Judge there states, and if that decision is looked at, it lays down nothing of that kind. In that particular case no doubt the fact was that the whole amount bid at the first sale was set off against the judgment debt, but that was only because the bidder at the first sale was found to have been in fact the judgment-creditor himself, and that being the case he was, under the provisions of s. 254, liable to make good the difference between the first and the second sales. Therefore it was almost a matter of course to set off against his judgment debt the liability which he was under of making good the deficiency. If that decision be looked at, it will be seen that in that very same case the Judges distinctly pointed out that what is to be forfeited under s. 254 is not any right which the

decree-holder may have under his decree, but only the deposit which has been made by the defaulting purchaser. That clearly shows that the Judges there did not treat the mere default of the purchaser in completing the sale as in any way affecting the right of the decree-holder. It is possible that the District Judge has been misled by a statement of the effect of that decision contained in a work which, although not a work of authority, is yet generally referred to, and is generally correct. The effect of the decision in *Joobraj Singh v. Gour Buksh Lal* 7 W.R., 110 is stated at p. 302 of Macpherson's CPC as the District Judge has here stated it. But on a closer examination of that case it really appears that it has no bearing whatever upon this question. The decree-holder here has a decree against the judgment-debtor which is still unsatisfied, and there is nothing in the law or in that decision which prevents him from proceeding as far as he likes, until that decree is satisfied, against the property of the judgment-debtor. The result is that the order of the Judge, in so far as it orders the Munsif not to confirm the sale of the properties other than the property originally sold, will be set aside, and the execution proceedings will be brought to a termination according to law. The appellant is entitled to the costs of this appeal and of the lower Appellate Court.