
(1870) 06 CAL CK 0008

Calcutta High Court

Case No: None

Ruplal Khettry and
Another

APPELLANT

Vs

Mahima Chandra Roy

RESPONDENT

Date of Decision: June 9, 1870

Judgement

Norman, J.

The case, by arrangement of the parties, stood over till to-day, and the question is now whether the plaintiffs are entitled to an injunction to restrain the sale until the rights of the parties are determined by this suit. The case is one of considerable difficulty. Mr. Kennedy for the plaintiffs could not support his contention by any case bearing directly on the point, and Mr. Woodroffe has argued with great force and ingenuity that the Court has no power or ought not to interfere. It is not without very considerable hesitation that I have come to the conclusion that I ought to stay the sale until the rights of the parties have been determined. I think it would be an abuse of the process of this Court, and would tend to create mischief, if I were to allow the sale to proceed by the Registrar under the decree in the suit upon the mortgage, when it is made plain to me that there is the strongest reason for supposing that the defendants have no title. This is not a case in which the Registrar sells the right, title, and interest of a person only. By the form of the decree he is to sell the mortgaged hereditaments, or a part thereof. On the same principle, that it is the duty of a person, who has rights in property advertised for sale in execution of a decree, to claim the property u/s 246 of Act VIII of 1859, and if his claim is disallowed to bring a suit within one year, from the time of the disallowance, which would be probably before the sale took place, it appears to me that it was the duty of the plaintiffs to set up their title to prevent the public from being defrauded, or themselves from having to litigate with a pauper. It appears to me that I must be guided by the question of convenience, or inconvenience which was the principle in the case of *Bacon v. Jones* 4 M. & Cr., 433, and I, therefore, grant the injunction. Great injury might result to the plaintiffs if I did not interfere, and a great fraud may be committed on the purchaser. I think no injury can result to the defendant by my granting this injunction. On these

grounds, therefore, though with some hesitation, I grant the injunction until the rights of the parties have been determined. The costs of both parties will be costs in the cause.