

(1879) 05 CAL CK 0022

Calcutta High Court

Case No: None

Dirgopal Lal and
Others

APPELLANT

Vs

Bolakee

RESPONDENT

Date of Decision: May 19, 1879

Citation: (1880) ILR (Cal) 269

Hon'ble Judges: Richard Garth, C.J; Prinsep, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The plaintiff took a mortgage-bond from Chemnarain on the 11th of March 1868. He obtained a money-decree on that bond on the 23rd of January 1869; and under that decree he had the mortgagor's interest put up for sale on the 29th of April 1870, and purchased it himself. The defendants took a mortgage-bond of the same property in November, 1868, upon which they obtained a decree on the 31st of May 1869; and under that decree, the mortgagor's interest was sold and purchased by the defendants on the 22nd of April 1870, a few days before the plaintiff's purchase.

2. Upon these facts, the lower Appellate Court has decided in favour of the plaintiff, upon the ground that his mortgage was first and his decree first. But as this is a suit for possession, we consider that the party who first purchased the mortgagor's interest and obtained possession, is entitled to retain possession as against the other, although his own right may be merely that of a trustee for the mortgagor, and may be subject to the plaintiff's mortgage lien, if the latter takes proper proceedings to enforce it.

3. The judgment of the Courts below will, therefore, be reversed, and that of the Munsif's restored with costs in all the Courts.