

(1969) 10 CAL CK 0022

Calcutta High Court

Case No: Suit No. 513 of 1953

Bibhuti Bhusan Roy

APPELLANT

Vs

Raja Janaki Nath Roy

RESPONDENT

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**Date of Decision:** Oct. 3, 1969**Acts Referred:**

- Civil Procedure Code, 1882 - Order 34 Rule 11, 209
- Limitation Act, 1963 - Article 181

**Citation:** (1970) 2 ILR (Cal) 347**Hon'ble Judges:** S.K. Mukherjea, J; B.C. Mitra, J**Bench:** Division Bench**Advocate:** Amiya K. Basu, for the Appellant; Gouri Mitter, for Plaintiff-Respondent and T.K. Biswas, for added Respondents, for the Respondent**Final Decision:** Dismissed

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**Judgement**

B.C. Mitra, J.

This appeal is directed against an order dated January 29, 1969, whereby the Registrar, Original Side, was directed to pay out of the money in his hands certain sums of money mentioned in the order to the Plaintiff-Respondent and also to his Solicitors.

2. On February 9, 1953, the Respondent No. 1 filed a mortgage suit for a decree under Order 34 of the CPC for Rs. 4,15,000. A preliminary decree was passed in this suit by consent of parties on June 11, 1956, and on November 20, 1961, a final decree for sale of the mortgaged property was also passed. On March 1, 1966, the Registrar of this Court was directed to sell the mortgaged property to the best purchaser, without fixing a reserve price, but subject to confirmation by this Court. On July 9, 1966, the Registrar, Original Side, sold the mortgaged properties to the highest bidders for Rs. 7,30,000. The purchasers subsequently made an application for payment to them of a sum of Rs. 5,47,500 and also for an order for a reference

to the Registrar for investigation of title of the property and to inquire whether a good title could be made out and further to report as to the parties who should be joined in the conveyance. On August 18, 1966, the purchasers deposited the balance of purchase price and paid the same into Court without prejudice to any question as to title to the said property. On January 25, 1967, an order was made directing the Registrar to investigate into the title to the property and to inquire whether a good title could be made out and to report as to the parties who should be joined in the conveyance. Pursuant to this order the Registrar held a reference and made his report on August 25, 1967. On September 25, 1967, an order was made confirming the report, and findings of the Registrar with a variation that two of the Defendants in the suit should join in the conveyance for self and as karta of the joint Hindu Mitakshara family. On January 15, 1968, an order was made confirming the sale and directing issue of a certificate of sale and also directing the Official Receiver to hand over possession to the purchasers.

3. Thereafter, the Plaintiff-Respondent made an application on a chamber summons on May 28, 1968, for an order that the purchase price amounting to Rs. 7,30,000 after deduction for costs charges for expenses be paid to it towards its claim under the final decree and also that a sum of Rs. 40,000 be paid to its Solicitors out of the sum payable to it towards the costs of various proceedings. This application was disposed of by the order dated January 29, 1969, which is the subject-matter of this appeal.

4.. Mr. Amiya Kumar Basu, learned Counsel for the Appellant, contended firstly that by the said order interest on costs had been allowed, and secondly that interest on interest had also been allowed to the Plaintiff-Respondent although it was not entitled either to interest on costs or to interest on interest, under Order 34, Rule 11 of the Code of Civil Procedure. He referred to the final decree and submitted that by this decree the Plaintiff-Respondent was to be paid the amount due under the preliminary decree which included interest on costs and also subsequent interest under Order 34, Rule 11 of the Code of Civil Procedure, and this award of interest, it was argued, amounted to payment of interest on interest which was contrary to the provisions in the Code.

5. Mr. T. K. Biswas, appearing for the added Respondents, canvassed several points before us. The first point urged by him was that the Plaintiff-Respondent had deliberately delayed in making the application for final decree and also the application for payment to it of the amounts due under the final decree so that interest claimed under the decree might be inflated. The result of this delay, it was submitted, was that the punish mortgagee and his client, who was a sub-mortgagee, were deprived of their claims. He further argued that under chap. 27, Rule 31 of the Rules of this Court the certificate of sale stood automatically confirmed by efflux of time and there was no point in the Plaintiff-Respondent's waiting for confirmation of sale by this Court, and it should have applied for

payment of the money due under the decree immediately on confirmation of the certificate of sale by efflux of time.

6. The next contention of Mr. Biswas was that there was inordinate delay in obtaining the final decree, which could have been obtained much earlier, and by reason of this delay the Plaintiff-Respondent has allowed interest to be added to its claim and as a Court of equity this Court ought not to allow such interest to be added to the decree-holder's claim. The third contention of Mr. Biswas was that the sale was held in 1966, but the sale proceeds were allowed to remain in the hands of Registrar without any investment being made of the same with the result that there has been loss of interest which could otherwise have been appropriated by his client towards her claim.

7. In support of his contentions Mr. Biswas firstly relied upon a decision of this Court reported in *Udit Narayan Jha v. Mt. Jasoda Suhun Kalan* AIR 1918 pal. 151. In that case it was held that Section 209 of, the Code of Civil Procedure, 1882, which applied to the decree in that case provided that when the Court gave a money decree it could direct in addition to the principal sum with interest upto the date of suit payment of interest on the principal at reasonable rate from date of suit to date of decree and further interest from date of decree to date of payment and that if no such interest was expressly given it was to be considered as refused. In that case, the decree itself did not allow any further interest from date of decree to date of payment. We do not think that this decision is of any assistance in this case because the final decree has allowed interest on the basis of the preliminary decree and also in accordance with Order 34, Rule 11 of the Code. The next case relied on by Mr. Biswas was also a decision of this Court in [Life Insurance Corporation of India Vs. Jayanta Kumar Roy and Others](#), . In that case again it was held that where a Subordinate Judge who passed the preliminary decree did not apply his mind to the consideration of the question at what rate subsequent interest under Order 34, Rule 11(b) was to be allowed, it must be held that the decree was silent on the point and, therefore, interest must be deemed to have been disallowed. This decision again to our mind has no application to this case because both the preliminary and the final decree have made specific provision for payment of interest, and it is not a case where the Court passing the decree did not apply its mind to the question of subsequent interest. The next case relied upon by Mr. Biswas was a Bench decision of this Court in *Megraj Marwari v. Nursing Mohan Thakur* ILR Cal. 846. In that case, it was held that a mortgagee who had obtained a decree for sale awarding interest upto the date of realisation was entitled to interest upto the date of confirmation of the sale. The question before the Court in that case was whether the mortgagees were entitled to interest upto the date of confirmation of the sale or upto the date of sale, and it was held that the decree-holder was entitled to interest upto the date of confirmation of sale. It was, however, also held that the question depended upon the terms of the decree which the mortgagee had obtained. In this appeal, the terms of the two decrees are quite clear on the question of interest and, therefore,

this decision is of no assistance in the instant appeal now before us. Secondly, the question of further interest on decree was not raised at all in that case and, therefore, that question was not considered by the Court.

8. On the question of interest on costs and interest on interest Mr. Gouri Mitter, counsel for the Plaintiff-Respondent, contended in the first place that the preliminary decree was passed by consent of parties and having consented to the decree, it was not open to the Appellant to challenge the same on the ground that interest had been allowed by that decree at a rate higher than the rate to which the Plaintiff-Appellant was entitled, even assuming that interest above the limits permissible in law was awarded under the decree. Secondly, he argued that a final decree had also been passed and, so far as this Court is concerned, it cannot go beyond or behind the terms of either the preliminary or the final decrees passed by this Court. Thirdly, it was submitted that no appeal had been preferred either against the preliminary or the final decree and, therefore, it was not open to either of the parties to have the terms of the decrees varied in a proceeding by the Plaintiff-Appellant for an order for payment of money due to it under the mortgage decree. Mr. Mitter next argued that the CPC was amended by an Amending Act No. LXVI of 1956 and this amendment came into force on January 1, 1957. By this amendment, Clause (ii) of Order 34, Rule 11(a) was omitted and this Clause (n) provided for payment of interest on the amount of costs of the suit awarded to the mortgagee. By this amendment, Clause (b) of Order 34, Rule 11 was also amended and Clause (b) as it stood before the amendment provided that subsequent interest was to be allowed upto the date of realisation or actual payment at such rate as the Court deemed reasonable on the aggregate of the principal sum specified in Clause (a) and of the interest thereon as calculated in accordance with that clause. There was, therefore, specific provision in Clause (b), as it stood before the amendment, for payment, of interest on interest. The preliminary decree in this case was passed on June 11, 1956, before the amendment came into force, and the Court below, it was submitted, was entirely right in allowing interest on costs and also interest on interest by the preliminary decree. These contentions of Mr. Mitter appear to us to be sound and should be upheld. It cannot be overlooked that the preliminary decree in this case was passed by consent of parties. But apart from that consideration the interest allowed by the preliminary decree was in accordance with the law as it stood at the time when the decree was passed. In the final decree interest has been allowed in accordance with the preliminary decree and also in accordance with the provisions of Order 34, Rule 11. The contention on behalf of the Appellant, therefore, regarding interest fails.

9. With regard to the contention regarding certificate of sale it is clear to us that the provisions of the Rule regarding certificate of sale has been misconstrued by the learned Advocate for the added Respondents. There is a clear distinction in the Original Side Rules between a certificate of the result of sale made by the officer who conducts the same and the certificate of sale to be issued by the Court as

evidence of title to the property sold. It is a certificate of the result of the sale by the officer conducting the sale which is confirmed by effluxion of time under chap. 27, Rule 31. There is a separate provision for a certificate of sale to be issued by the Court as evidence of title to the property in chap. 27, Rule 45 of the Rules. The Court does not issue a certificate on the report of the sale, which is issued by the officer conducting the sale. A certificate of sale to be issued by the Court can be obtained only by an application on a chamber summons. The two certificates are entirely different in character, purpose and scope.

10. As to the contention that the Plaintiff-Respondent should be made liable for non-investment of the sale proceeds it is to be noticed that on August 18, 1966, the Solicitors for the purchasers wrote to the Registrar that the balance of the purchase money had been put in on August 16, 1966, and also that the Registrar had been directed to invest the purchase money in approved securities until the question of title was determined. The Solicitors also enclosed in their letters a signed copy of the minutes of the order dated August 16, 1966. A copy of this letter was forwarded to the Solicitors of the Plaintiff-Respondent. It is clear to us that the purchaser's Solicitors had taken all necessary steps for investment of the sale proceeds in terms of the Court's order, and it cannot therefore be said that the Plaintiff-Respondent's Solicitors were negligent in not taking the appropriate steps in that behalf. This contention, therefore, also fails and is rejected.

11. With regard to the question of delay in obtaining the final decree Mr. Mitter submitted that under Article 181 of the Limitation Act the Plaintiff-Respondent had time till January 11, 1962, for obtaining the final decree and the Notice of Motion for the final decree was taken out on September 5, 1961, and the final decree was passed on November 20, 1961. It was argued that the final decree was obtained well within the period of limitation and, therefore, it could not be said that there was any delay in obtaining, the same for the purpose of having more interest added to the mortgagee's claim. It seems to us this contention of Mr. Mitter is also well-founded. As the application for the final decree was made and the final decree itself was obtained within the period of limitation, there is no substance in the contention that the Plaintiff-Respondent deliberately delayed in making the application for the final decree in order to have further interest added to its claim.

12. It is to be remembered that under the condition of sale, the sale was subject to an order of confirmation by the Court. The auction-purchasers raised a question as to the title of the property as they were entitled to do, and on their application the Court directed an investigation into the title of the property. The Registrar after completion of the investigation made his report on August 25, 1967. An application for confirmation of sale could be made only after the said report of the Registrar was confirmed by the Court on September 25, 1967. The application for confirmation of sale was made shortly afterwards on November 18, 1967. An order confirming the sale was made on January 15, 1968, and the application for payment

was made by the Plaintiff-Respondent on May 25, 1968. In these facts, Mr. Mitter submitted, and we think rightly, that there was no delay, laches or negligence on the part of the Plaintiff-Respondent in taking steps which the law required it to take for realisation of the amount due to it under the mortgage decree.

13. In the premises, in our view, there is no merit in the appeal which is accordingly dismissed. The Appellant to pay to the Plaintiff Respondent the costs of this appeal.

S.K. Mukherjee, J.

14. I agree.