

Code of Civil Procedure 1908

Section 73 - PROCEEDS OF EXECUTION SALE TO BE RATEABLY DISTRIBUTED AMONG DECREE HOLDERS

1) Where assets are held by a court and more persons than one have, before the receipt of such assets, made application to the court for the execution of decrees for the payment of money passed against the same judgment debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons: PROVIDED as follows:-- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale; (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold; (c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied firstly, in defraying the expenses of the sale; secondly, in discharging the amount due under the decree; thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and fourthly, rateably among the holders of decrees for the payment of money against the judgment debtor, who have, prior to the sale of the property, applied to the court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof. (2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets. (3) Nothing in this section affects any right of the Government.