

Than Chand Vs. Jagannath

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SooperKanoon Citation : sooperkanoon.com/450777

Court : Allahabad

Decided On : Mar-04-1909

Reported in : (1909)ILR31All346; 2Ind.Cas.400

Judge : George Knox and; Griffin, JJ.

Appellant : Than Chand

Respondent : Jagannath

Judgement :

George Knox and Griffin, JJ.

1. A preliminary objection is raised to the hearing of this appeal, but we do not think it necessary to decide it, as independently of the objection we are of opinion that the appeal must fail.

2. The appeal before us is a second appeal and the contention raised by the decree-holder is to the effect that Section 310A of the Code of Civil Procedure is not applicable to a sale carried out under the provisions of Section 89 of the Transfer of Property Act. The sale in the present instance was carried out in pursuance of an order absolute passed under Section 89 of the Transfer of Property Act. This High Court has not thought necessary to avail itself of the power given by Section 104 of the Act to lay down any rules for carrying out orders under Chapter XV of Act No. IV of 1882. The suit out of which this appeal arose was a

suit of the nature provided for in Chapter IV. In the absence of any special rule, the provisions contained in the Code of Civil Procedure for suits and execution proceedings in suits govern suits brought under the provisions of Chapter IV of the Transfer of Property Act. We are, therefore, prepared to hold that the sale which was carried out under Chapter XIX of the Section 310A is expressly made applicable and the decision of the lower appellate court is not open to question on this account. High Court Both of those courts have made special rules present case. Over and above this we should not be inclined to interfere unless it has made special rules and the case decided by those courts differ, therefore, from the present case. Over and above this we should not be inclined to interfere unless it was absolutely necessary, seeing that the decree-holder has got his money and all that he is entitled to in the interests of justice. He has endeavoured to take advantage of technical procedure in order to retain the mortgaged property, instead of being satisfied with the money due under the mortgage-bond. We dismiss the appeal with costs.