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SooperKanoon Citation : sooperkanoon.com/460148

Court : Allahabad

Decided On : Feb-15-1910

Reported in : 5Ind.Cas.419

Judge : George Knox and ;Karamat Husain, JJ.

Appellant : Ganesh Singh

Respondent : Debi Singh

Judgement :

1. This second appeal Arises out of Execution Proceedings, taken by one Ganesh Singh on the basis of a compromise decree obtained by him on the 29th of August 1907.

2. On the 8th of March 1907, Debi Singh had executed a deed of usufructuary mortgage in favour of Ganesh Singh. Possession over the property mortgaged was, however, not given and in consequence Ganesh Singh brought a suit for possession. The parties came to terms with each other with the result that in accordance with the compromise a simple money decree was passed in favour of Ganesh Singh. One of the terms of the compromise embodied in the decree was that the decree was not to be executed for 2| months. At the end of this period as payment had not been made, Ganesh Singh asked the Court to attach, and bring to sale the property which had formed the subject-matter of the mortgage dated the 8th of March 1907.

3. The judgment-debtor objected that the mortgagee was not entitled to bring this property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage (Order 34, Rule 14 of Act No. V of 1908).

4. The Court of first instance sustained the objection, and in appeal the order of the first Court was upheld.

5. The decree-holder comes here in second appeal and urges that the Court below has erred in holding that the appellant cannot bring the property in dispute to sale without instituting a suit on the mortgage for sale. In support of his contention the learned Vakild laid stress upon the fact that the decree under which proceedings had been taken was a compromise decree, and, therefore, Order 34, Rule 14 did not apply. The learned Vakild for the respondents supported the order of the Courts below upon the authority of *Madho Prasad Singh v. Baij Nath Tewari* A.W.N. (1905) 152 : 2 A.L.J. 356, *Hemban v. Bihari Gir* 28 A. 58 : A.W.N. (1905) 189 : 2 A.L.J. 479 and *Narsingh Das v. Musammat Munna* 6 A.L.J. 731 : 6 M.L.T. 182 : 3 Ind. Cas. 537. All these cases, however, are distinguishable from the present case. In none of them had the judgment-debtors in any way consented to the decree passed against them. The facts of the present case bring it within the principle laid down by the Calcutta Court in *Rai Kashi Parshad Singh v. Babu Dhuleep Narain Sahu* 8 C.W.N. 264. Both in the case here and in the case there the decree was passed on a compromise, and we agree with the Calcutta Court in holding that the respondents are consequently estopped from objecting to it. (The case there is even stronger than the Calcutta case), and as the Calcutta Court observes whether it be a good decree or a bad decree, the Court executing the decree cannot call it in question but must execute it.

6. For these reasons we decree the appeal, set aside the orders of both the Courts below, and return the case to the first Court through the lower appellate Court, with directions to re-admit the proceedings upon its pending file and to dispose of it on its merits. The appellant will get his costs in all Courts.