

Tej Pal-decree-holder Vs. Tara Singh and anr.

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SooperKanoon Citation : sooperkanoon.com/476863

Court : Allahabad

Decided On : Apr-30-1914

Reported in : AIR1914All467; 24Ind.Cas.93

Judge : Rafique and ;Piggott, JJ.

Appellant : Tej Pal-decree-holder

Respondent : Tara Singh and anr.

Judgement :

1. The facts which have given rise to this appeal are as follows : The appellant in this case sued on a mortgage and obtained a decree, in execution of which he purchased the mortgaged property. The respondents were impleaded in the suit as defendants on the ground that they had purchased the same property under a prior mortgage. The respondents resisted the suit on the ground that no decree for sale on the mortgage of the appellant could be passed, but that the appellant may be allowed first to redeem the prior mortgage. The plea in defence was not accepted by the Court below, and a decree for sale was passed subject to the prior mortgage of the 7th of August 1866. The appellant purchased the mortgaged property in execution of his decree and obtained possession of the property purchased through, Court. The respondents then filed an application to the Court which had delivered possession to the appellant praying that possession be restored to them as they had been wrongfully dispossessed. The application purported to have been made under Order XXI, rules 100 and 101, and Section 47

of the Code of Civil-Procedure. The learned Munsif to whom the application was made rejected it. The respondents preferred an appeal which came up for hearing before the Subordinate Judge. The latter, purporting to act under Section 151 of the Code of Civil Procedure, accepted the appeal and set aside the order of dismissal of the application of the respondents and remanded the case for disposal on the merits.

2. It is contended in this Court on behalf of the appellant that no appeal lay to the Subordinate Judge. The argument is based on the contention that the application of the respondents does not fall under Section 47 of the Code of Civil Procedure and the mere mention of that section, though the application did not fall under it, would not give them a right of appeal. In support of this contention the learned Vakil, for the appellant, has relied on the case of *Musammat Bhagwati v. Banwari Lal* 1 Ind. Cas. 416 : 31 A. 82 (F.B.) : 6 A.L.J. 71 : 5 M.L.T. 185. For the respondents the argument is that the appellant is a decree-holder and in spite of his purchase the dispute between him and the respondents is practically a dispute between a decree-holder and a judgment-debtor. This contention, proceeds on the assumption that the status of the present appellant who was a decree-holder remains the same, though he might subsequently have become a purchaser of the property at auction and obtained possession as such purchaser. This argument is negatived by the Full Bench decision of *Musammat Bhagwati v. Banwari Lal* 1 Ind. Cas. 416 : 31 A. 82 (F.B.) : 6 A.L.J. 71 : 5 M.L.T. 185. referred to above. We must, therefore, hold that no appeal lay to the District Judge. We accordingly accept this appeal and setting aside the order of the lower Appellate Court restore that of the Court of first instance with costs in both Courts, including in this Court fees on the higher scale.