

Deefholts Vs. Peters and ors.

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Court : Kolkata

Decided On : Jun-29-1887

Reported in : (1887)ILR14Cal631

Judge : W. Comer Petheram, C.J. and ;Ghose, J.

Appellant : Deefholts

Respondent : Peters and ors.

Judgement :

ORDER

1. We think that this rule must be discharged. The rule was obtained for the purpose of compelling the Subordinate Judge to enquire into a claim which had been made by a person claiming to be interested in a certain property which had been ordered to be sold under a mortgage decree: the mortgage being a mortgage of that very property, and the decree sought to be executed being a decree passed upon the mortgage bond, and directing the sale of the property.

2. We think that proceedings by way of claim are not applicable to a case of this kind. Proceedings by way of claim are applicable only in cases of money decrees where property of the judgment-debtor has been attached; that is, where some property of the judgment-debtor is attached for the purpose of satisfying any general money claim. In that kind of claim it is clear that there should be some speedy remedy for the purposes of ascertaining whether the property claimed is

the property of the judgment-debtor at all; but in a case like this where the property has been dealt with in a solemn way by the decree of the Court, and has been declared liable to sale under the mortgage, that remedy would not be applicable. In cases like this the remedy is not by claim under Section 278, but is either by regular suit to establish his right to the property, or by resistance to the purchaser, or the mortgagee, or other person who would be put in possession of the property.

3. The rule will, therefore, be discharged.

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