

Privy Council Appeal No. 189 of 1919.

Bengal Appeal No. 126 of 1917.

Bholanath Sen - - - - - *Appellant*

v.

Balaram Das, since deceased, and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 14TH JULY, 1922.

Present at the Hearing :

LORD PHILLIMORE.

LORD CARSON.

SIR JOHN EDGE.

MR. AMEER ALI.

MR. JUSTICE DUFF.

[*Delivered by* LORD PHILLIMORE.]

Their Lordships, having heard a full statement of the facts of the case, and everything that could be urged by learned counsel for the appellant, are satisfied that the decree appealed from must stand.

There are, in fact, on final examination, but two points to be taken on behalf of the appellant. The first is that the decree ought to have been a personal decree only and not a decree as in a mortgage suit involving the mortgaged properties, the suggestion being that as the appellant had no title to any part of the mortgaged property, there ought not to be an order against the mortgaged properties. The answer is that it does not lie in his mouth to say so. He has professed to have an interest in this property, and whatever interest he may have had has been bound by the mortgage, and, as far as he is concerned, must be enforced against him.

The second point taken is that the decree ought only to have been made in respect of 4 annas of the property, and it has, in fact, been made against 16 annas. The answer to that is that those who say this have misconstrued the decree. There is no doubt something in the language of the learned Judge of the High Court who delivered the judgment which would look as if he so thought, and possibly, as against the appellant if the Judge had so thought it might have been said, that a decree had been passed against him in respect of any interest he might have in the 16 annas ; but, however that may be, when the decree came to be carefully drawn up, it is quite clear that it only affects the four annas.

These two points, therefore, fail, and their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

BHOLANATH SEN

v.

BALARAM DAS, SINCE DECEASED, AND
OTHERS.

DELIVERED BY LORD PHILLIMORE.

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