

1880

RAM SARAN
LAL
v.
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KUAR.

mortgagee to the recovery of his mortgage-debt than by providing for the repayment of a part thereof, and would be maintainable. But a transfer is not positively, but only implicitly, prohibited by the terms used in the instrument executed by the mortgagee converting the sale into a redeemable mortgage. What he says is that he will not recognise the transferee as having acquired by the purchase the equity of redemption or cancel his own sale-deed. Such a declaration appears to be beyond his legal competence and to be of no effect.

For the above reasons, and those recorded by me on the 11th August last, and in reference to the opinion expressed by the Full Bench on the 30th November last, on the question referred to it by the Chief Justice in this case, I would disallow the first three pleas in appeal. I would also disallow the two remaining pleas, for the money has been deposited, and nothing has been found to be due on account of embankments and wells. I would therefore dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

1880
December 22.

Before Mr. Justice Spankie and Mr. Justice Straight.

MUKHI (JUDGMENT-DEBTOR) v. FAKIR (DECREE-HOLDER).

Dismissal of appeal for appellant's default—Appeal—Act X of 1877 (Civil Procedure Code), ss. 2, 540, 556, 558.

An order under s. 556 of Act X of 1877 dismissing an appeal for the appellant's default is not a "decree," within the meaning of s. 2, and is not appealable.

THE judgment-debtor in this case appealed from the order of the Court executing the decree disallowing his objections to its execution. On the day fixed for hearing the appeal the appellate Court ordered the appeal to be "struck off," on the ground that neither the judgment-debtor nor his pleader were present. The judgment-debtor thereupon applied to the appellate Court for the re-admission of the appeal, under s. 558 of Act X of 1877, and the Court

* Second Appeal, No. 62 of 1880, from an order of J. W. Power, Esq., Judge of Ghazipur, dated the 23rd March, 1880, affirming an order of Chaudhri Jagannath, Munsif of Saidpur, dated the 10th January, 1880.

refused to re-admit it. The judgment-debtor subsequently appealed to the High Court from the order striking off the appeal for his default.

Mr. *Niblett* and *Lala Jokhu Lal*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*), for the respondent.

The High Court (*SPANKIE, J.*, and *STRAIGHT, J.*), delivered the following judgment:—

STRAIGHT, J.—The only appeal before us relates to the order passed by the Judge under s. 556 of the Civil Procedure Code, striking off the appeal for default in appearance of the appellant either in person or by pleader. The proper course for the appellant to have pursued was to apply to the lower appellate Court under s. 558 for re-admission of his appeal, and this he seems to have done, and an order was passed refusing his application. This order is neither before us, nor indeed is it appealed, and we cannot consider it. All we have to do with is the order striking off the appeal for default, and this, in our opinion, is not open to second appeal. For the “order,” though it means the formal expression of the Court’s decision in respect of the default of the appellant, does not come within the definition of decree in s. 2 of the Civil Procedure Code.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Pearson and Mr. Justice Straight.

EMPRESS OF INDIA v. BHAGIRATH.

Murder—“*Corpus delicti*”—Act XLV of 1860 (*Penal Code*), s. 302.

The mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder.

THIS was a reference to the High Court by Mr. W. C. Turner, Sessions Judge of Agra, for confirmation of the sentence of death passed by him on one Bhagirath convicted of the murder of one Ganga Das. Bhagirath had been also charged before the Sessions Judge at the same time with the murder of Ganga Das’ wife,

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