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he cannot disturb the position of the plaintiff and his purchase was subject to the mortgage decree of the defendants 1 to 3. Under these circumstances, even if the present suit was maintainable, the plaintiff has made out no case for a refund of the purchase money.

KULWANT  
SAHAY, J.

The result is that the decree of the Subordinate Judge is confirmed and the appeal is dismissed with costs.

JWALA PRASAD, J.—I agree.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Das and Ross, J.J.*

1924.

BHAGWAN CHANDRA DAS

May, 22.

v.

RAI SAHIB DHARAM NARAIN DAS.\*

*Mortgage Decree—right of decree-holder to have all the mortgaged properties advertised for sale.*

The holder of a decree on a mortgage is entitled in execution of the decree to have all the mortgaged properties advertised and put up for sale even though a part of the property has been purchased by a stranger, but it is entirely in the discretion of the court to direct in which order the properties should be sold.

*Syed Mohammad Saddik v. Saudagar Mian Lahari*<sup>(1)</sup>, followed.

'Appeal by the decree-holders.

The facts of the case material to this report are stated in the judgment of Das, J.

\* Appeal from Appellate Order no. 286 of 1923, from an order of R. E. Russell, Esq., District Judge of the Santal Parganas, dated the 28th August, 1923, confirming an order of P. M. Robertson, Esq., Subordinate Judge of Rajmahal, dated the 7th July, 1923.

(1) (1910-11) 15 Cal. W. N. 80 (32).

*Janak Kishore*, for the appellants.

*Noresh Chandra Sinha* and *B. B. Ghose*, for the respondents.

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DAS, J.—This appeal is directed against the order passed by the learned District Judge of Santal Parganas on the 28th August, 1923, by which he affirmed the order of the Subordinate Judge of Rajmahal, dated the 7th July, 1923. The decree-holders are the appellants before us. The opposite party represented by Mr. *Noresh Chandra Sinha* purchased some of the properties, which are the subject-matter of this appeal, subject to a pre-existing mortgage in favour of the appellants. The appellants sued upon their mortgage and obtained a decree. They are now proposing to execute the mortgage decree and the only question is whether they are entitled to have all the properties which were mortgaged to them sold in execution of their decree. As I have already stated the opposite party purchased some of the properties and he applied for an order that the properties purchased by him should, in the first instance, be excluded from the sale. The order of the learned Subordinate Judge was in these terms :

" I direct that the properties mentioned in the petition of D. N. Das be excluded from sale, as the remaining property is probably sufficient to realize the decretal amount. If the sale of these lands does not satisfy the decree, the lands excluded now will be put up to auction to make up the deficiency. Put up the amended sale proclamation on the 7th July, 1923."

This order has been affirmed by the learned District Judge. In my opinion the form of the order is defective. The decree-holder is entitled to have all the properties mortgaged to him put up for sale, but it is entirely in the discretion of the Court to direct in which order the properties should be sold; otherwise costs may be thrown away. It may be that the properties other than those which have been purchased by the respondents would be insufficient to satisfy the claim of the decree-holders. Upon the form of the order passed by the Courts below it would be necessary

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for the decree-holder to take out execution over again from the first stage to the last. Now, it seems to me that the decree-holder should not be forced to this position. All the properties must be advertised for sale and when they are actually brought into execution and become subject to sale it would be then for the Court to decide on just and equitable principles which property ought to be first sold [*Syed Mohammad Saddik v Saudagar Mian Lahari* (1)]. The result is that all the properties will be advertised for sale and the properties other than those which have been purchased by the respondent will be first put up for sale. If there is a deficiency then those properties also will be put up for sale. There will be no order as to costs.

Ross, J.—I agree.

## APPELLATE CIVIL.

*Before Das and Ross, J.J.*

BHAGWAN DAS

v.

SHEONANDAN PRASAD SAHU.\*

1924.

May, 29.

*Receiver—Partition suit—appointment of party, principles governing.*

Although partnership and partition cases provide an exception to the general rule that a party shall not, save in special cases, be appointed Receiver without the consent of his opponent, the exception does not apply where the court cannot rely on honest and disinterested management on the part of the party seeking to be appointed.

*Suprasanna Roy v. Upendra Narain Roy* (2), distinguished.

*Allen v. Lloyd* (3), referred to

\* Appeal from Original Order no. 81 of 1924, and Civil Revision no. 175 of 1924, from an order of B. R. C. Chowdhry, Additional Subordinate Judge of Monghyr, dated the 25th April, 1924.

(1) (1910-11) 15 Cal. W. N. 80 (82).

(2) (1918-14) 18 Cal. W. N. 598.

(3) (1879) 7 Ch. D. 447.