

## Kalian Das and Others Vs Bhawani Shankar and Others

**Court:** Allahabad High Court

**Date of Decision:** Feb. 18, 1910

**Acts Referred:** Civil Procedure Code, 1908 (CPC) " Order 21 Rule 23  
Transfer of Property Act, 1882 " Section 88

**Citation:** 5 Ind. Cas. 546

**Hon'ble Judges:** Karamat Husain, J; George Knox, J

**Bench:** Division Bench

**Final Decision:** Allowed

### Judgement

1. This appeal arises out of execution proceedings. The decree-holder put into execution a decree which he had obtained against one Debi Das u/s

88 of the Transfer of Property Act. In pursuance of these proceedings the mortgaged property was sold and proved insufficient to satisfy the

decree. Thereupon the decree-holder put in an application u/s 90 of the same Act, and as Debi Das had died in the meantime, in the names of the

legal representatives of the said Debi Das. On the 14th of February 1903, he obtained an order u/s 90 which directed the sale of such property as

the decree-holder might show that Kalian Das and others, these representatives, had inherited from the original judgment-debtor Debi Das. He

tried to obtain execution of this order first on the 18th of February 1903 again on the 3rd of September 1915 and the third time on the 15th of

January 1906. Apparently upon all these proceedings execution had been ordered but for some reason or other, the proceedings had been struck

off as infructuous. On the 12th of June 1908, the decree-holder applied for the attachment and sale of certain property which he scheduled in the

application. Upon this application being placed before the Court, the Court ordered that notice should issue u/s 248 of Act No. XIV of 1882.

Why the Court took this step, it does not appear? Section 248 distinctly says that no such notice is necessary where a previous application for

execution against the judgment-debtor has been made and the Court has ordered execution to issue against him. This notice caused the Court to

fall into in the very danger which is apprehended the judgment-debtor intended. It was clearly an unnecessary proceeding. But as the Court issued

it, it was bound to anticipate that objections would be put forward u/s 249 and such objections were put forward. One objection was that

execution was barred by limitation and the second was that the property sought to be attached was not the property inherited from Debi Das. The

Court considered the first of these objections but refused to consider the second on the ground that the parties were not prepared to give

evidence, and that the application was premature. Possibly if the Court had stopped here, no great objection could have been taken to its order,

but he put on record that the other objections are disallowed. The heirs of Debi Das come here in appeal" and contend that the Court was bound

to consider the objections raised by them before proceeding to make any order for execution. This objection of theirs is in accord with the

provisions of Section 249 of the Act of 1882 and of Order 21, Rule 23, of the present Civil Procedure Code. The law gives the Court no

alternative when objections are put forward after it has issued notice under Order 21, Rule 22. The appeal is allowed and the order of the Court

under appeal is set aside. The proceedings will go back to the Court below with directions to re-admit them upon its file of pending proceedings

and consider the objections raised by the judgment-debtors, and then to make such order as it thinks fit. The appellants will get their costs of both

the Courts. These costs will include fees in this Court on the higher scale.