

(1917) 11 AHC CK 0012

Allahabad High Court

Case No: None

Thakur Dambar Singh

APPELLANT

Vs

Mohammad Munawar
Ali and Another

RESPONDENT

Date of Decision: Nov. 10, 1917

Citation: 43 Ind. Cas. 129

Hon'ble Judges: Henry Richards, C.J; P.C. Banerji, J

Bench: Division Bench

Judgement

1. One Sri Kishun had obtained a certain decree. The appellant here obtained another decree against Sri Kishun and attached the decree belonging to Sri Kishun. Sri Kishun was declared an insolvent and his property vested in the Official Assignee. Notwithstanding the adjudication of Sri Kishun the appellant naught to put into execution the decree belonging to Sri Kishun, which he had attached in execution of his decree. The judgment-debtors objected that Dambar Singh was not competent to execute that decree. The Court below held that the objection had force and dismissed the application. We think the decision appealed from is correct. The effect of the attachment obtained by the appellant was not to vest in him any property. It gave him no doubt the right to execute the attached decree, and bad it not been for the insolvency he would still have that right. The insolvency, however, vested all the property of the insolvent in the Official Assignee and in effect cancelled the attachment obtained by Dambar Singh. Once Sri Kishun was declared an insolvent, the Official Assignee was the only person who could execute the decree which Sri Kishun had obtained, unless the Official Assignee had, in realising the estate, sold the decree to some third party [see the decision of their Lordships of the Privy Council in *Raghunath Das v. Sundar Das* 9 Ind. Cas. 786 :35 M. 622 : (1911) 1 M.W.N. 187 : 9 M.L.T. 312 : 21 M.L.J. 577.

2. In the third ground in the memorandum of appeal the appellant contends that the Court below has also dismissed his application to recover certain costs which

were no part of the decree belonging to Sri Kishun but which were in fact awarded to him as costs of previous execution proceedings. We think that this objection may have force. If any costs were awarded to Dambar Singh personally against the judgment-debtors, those costs form no portion of the assets of Sri Kishun and accordingly never vested in the Official Assignee. Save as just mentioned we dismiss the appeal but in doing so expressly state that the, dismissal of the appeal is not to prejudice the right of the appellant (if he has any) to recover costs which were personally awarded to him. We make no order as to costs of the appeal. The order of the Court below as to costs in that Court will stand.