

(1879) 06 AHC CK 0006

Allahabad High Court

Case No: None

Sadik Ali Khan

APPELLANT

Vs

Muhammad Husain
Khan

RESPONDENT

Date of Decision: June 4, 1879

Citation: (1880) ILR (All) 386

Hon'ble Judges: Spankie, J; Oldfield, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Spankie, J.

It appears that the original decree-holder had made an application to execute his decree, and notice having issued u/s 248 of Act X of 1877, the 20th September 1878 was fixed for the hearing. In the meantime, on the 17th, appellant petitioned to have his name registered as purchaser of the decree, and to be allowed to execute the decree. An order for notice on the decree-holder and judgment-debtor was made in accordance with Section 232 of the Act. But talabana not having been paid, the case was struck off.

2. An application for execution, the subject of the present contention, was made on the 24th January 1879, and refused by the Subordinate Judge u/s 230, because owing to his not having lodged the service money on the former application, due diligence had not been shown in executing the decree; It is contended that Section 230 does not apply to this case.

3. It is true that if a decree has been transferred by assignment in writing to any other person, the transferee may apply for its execution to the Court which passed it, and if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder. Then Section 230 of Act X of 1877 would of course apply. But there is

a proviso, the conditions of which must be fulfilled before the Court could allow the execution. The proviso attached to Section 232 is that notice in writing of the application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution. Until, therefore, this notice has been issued, and until the objections (if any) had been heard, the Court would not be in a position to grant execution. Up to the date of the present application, and though a former application had been made both under Sections 230 and 232, and in each case an order for serving the notice required by law had been made, the application for execution had not been granted. In the one case, the decree-holder ceased to have any interest in the decree, and in the other, as we have seen, talabana had not been paid, and no execution was ordered. Therefore, it would seem that the present application cannot be rejected on the grounds set forth in the Subordinate Judge's order, because no former application for execution had been granted, and, therefore, the question did not arise whether or the last preceding application due diligence was used to procure complete satisfaction of decree.

4. We, therefore, decree the appeal with costs, and reverse the order of the Subordinate Judge and direct him to proceed to dispose of the application for execution.