
(1880) 04 AHC CK 0021

Allahabad High Court

Case No: None

Bhagwan Prasad

APPELLANT

Vs

Sheo Sahai

RESPONDENT

Date of Decision: April 28, 1880

Citation: (1880) ILR (All) 856

Hon'ble Judges: Straight, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pearson, J.

Reading Section 326 * with Section 322 ♦ of the Code, we are of opinion that the lower Appellate Court's order, referring to a decree which directs the sale of Immovable property in pursuance of a contract specifically affecting the same, is right; and we therefore dismiss the appeal with costs.

*When Court may authorize Collector to stay public sale of land.

[Section. 326:--When, in any local area in which no declaration u/s 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. The provisions of Sections 322 to 325 (both inclusive) shall in such case apply to the Collector.]

♦ Powers of Collector as to execution of certain money decrees so transferred.

[Section 322:--Whenever the execution of a decree not being a decree directing the sale of Immovable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered

the sale of Immovable property, has been so transferred, the Collector may either proceed as the Court would proceed u/s 305, or if he has reason to believe that the judgment-debts of the judgment debtor can be discharged without a sale of the whole of such property, the Collector may (notwithstanding any order u/s 303, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue Authority) raise the amount necessary to discharge such debts with interest thereon according to the decree, or, if the decree makes no provision as to interest, then with interest (if any) at such rate as he thinks fit,

(a) by letting in perpetuity, or for a term, on payment of a premium equivalent to such amount, the whole or any part of the judgment-debtor's Immovable property: or

(b) by mortgaging the whole or any part of such property: or

(c) by selling part of such property: or

(d) by letting on farm or managing by himself or another the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(e) partly by one of such modes and partly by another or others of them. For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.]