

(1863) 06 CAL CK 0001

Calcutta High Court

Case No: Miscellaneous Appeals Nos. 575 and 594 of 1861

Misri Kooer

APPELLANT

Vs

Maharaja Maheswar Buksh Sing
and Another
 Sriongo Kooer
Vs Maharaja Maheswar Buksh
Sing

RESPONDENT

Date of Decision: June 1, 1863

Judgement

Sir Barnes Peacock, Kt., C.J.

This case has been referred to a Full Bench for the purpose of deciding whether an appeal lies from an order made by the Judge, under sections 270 and 271 of Act VIII of 1859, with regard to the claims of several rival decree-holders, in respect of the proceeds of property sold in execution of a decree. We are of opinion that, in this case, no appeal lies to this Court. The question which was raised in the lower Court was not a question arising between the parties to the suit in which the decree was passed, but between rival decree-holders. It was not a question arising between the plaintiff and defendant in any one of the suits, but it was a question between the plaintiffs in several suits, or in other words between rival decree-holders, as to the application of the proceeds of property sold under a decree.

2. The question is whether such a case is one in which an appeal is given by section 11 of Act XXIII of 1861. As the law originally stood, it was enacted by section 283 of Act VIII of 1859, that "questions relating to sums alleged to have been paid in discharge or satisfaction of a decree or the like shall be determined by order of the "Court executing the decree, and not by separate suit, and the order "passed by the Court shall be open to appeal."

3. It was subsequently found that the above provision was not sufficient, and consequently section 283 of Act VIII of 1859 was repealed by section 1 of Act XXIII of 1861, and a new enactment was substituted for it. By section 11 of the latter Act, section 283 of Act VIII of 1859 was re-enacted, and after the words "questions

relating to sums "alleged to have been paid in discharge or satisfaction of the decree or "the like" were added the words "and any other questions arising between "the parties to the suit in which the decree was passed, and relating to "the execution of the decree." All such questions were to be "determined by order of the Court executing the decree, the orders passed by the Court in such cases were open to appeal. As this was not a question arising between the parties to the suit, but between rival decree-holders, we think that an appeal does not lie. This appeal will, therefore, be dismissed with costs and interest. This decision governs the decision in Special Appeals Nos. 576, 587, and 594 of 1861, which will, accordingly, be also dismissed with costs and interest.