

(1869) 05 CAL CK 0002

Calcutta High Court

Case No: Motion or Rule Nisi No. 435 of 1869

Indra Chand Dugar

APPELLANT

Vs

Gopal Chandra Shetia and
Another

RESPONDENT

Date of Decision: May 29, 1869

Judgement

@JUDGMENTTAG-ORDER

Sir Barnes Peacock, Kt., C.J.

In this case a decree was sent from Moorshedabad to Rajshahye to be executed. In execution of that decree property in Rajshahye was seized. Roy Dhanpat Sing claimed that the property belonged to him and not to the judgment-debtor. Upon that the execution-creditor petitioned that Roy Dhanpat Sing might be cited, in order that he might be examined to prove the validity of his claim, and he was called upon by the Rajshahye Court to show cause why he should not attend and be examined. Upon that Roy Dhanpat Sing applied to the Subordinate Judge of Moorshedabad for an order recalling the decree from the Rajshahye Court, and the Subordinate Judge called upon the execution-creditor to show cause why an order to that effect should not be issued. No affidavit appears to have been filed by Roy Dhanpat Sing in support of his application. If Roy Dhanpat Sing had a just claim to the property, which was seized in Rajshahye, he might have supported that claim by his own oath, and he would have obtained relief in the Rajshahye Court. He had no locus standi in the Moorshedabad Court to apply to have the decree re-called, and the Subordinate Judge of Moorshedabad had no jurisdiction to re-call it upon his application. The failure of the execution-creditor to show cause did not give the Subordinate Judge jurisdiction. Under these circumstances the order of the Subordinate Judge, for re-calling the decree, must be set aside, and the decree sent back to Rajshahye. The case will be restored to the file of the Rajshahye Court, and will proceed as it would have done if the record had not been removed. I may observe that the order of the Subordinate Judge effectually served the interest of Roy Dhanpat Sing; for after the decree had been returned, the Rajshahye Court

determined that it had no jurisdiction to decide on the validity of the claim of Roy Dhanpat Sing. This rule will be made absolute with costs.