

## Upendra Mohan Das Gupta Vs Rajah Jyoti Prosad Singh Deo

**Court:** Calcutta High Court

**Date of Decision:** May 16, 1910

**Citation:** 6 Ind. Cas. 386

**Hon'ble Judges:** Sharf-ud-din, J; Holmwood, J

**Bench:** Division Bench

### Judgement

1. This is an appeal from the order of the Subordinate Judge of Manbhoom, dated the 14th November 1908, issuing writ of attachment on the

movables of J3abu Upendra Mohan Das Gupta, a Vakil of the Court for the sum of Rs. 122 drawn by him as the Commissioner's fees in a

partition suit in excess of what was allowed by the Court as his costs. He appears to have had ample notice to refund the money and declined or

neglected to do so.

2. A preliminary objection is taken that no appeal lies inasmuch as the order is not one contemplated by Section 649 of the former Code of Civil

Procedure. We are inclined to think that it does fall within that section, but if it does not, it must be taken to be an order such as is contemplated by

Section 151 of the present Code, and such orders were held to be valid under the inherent powers of the Court in the case of Jogendra Chandra

Sen v. Wazid-un-nissa 34 C. 850 : 11 C.W.N. 856. It is admitted that if the order is u/s 649, the appeal must fail on the merits and if it is not,

there is no appeal and there is nothing to deal with in revision since ex hypothesi the money which the pleader refunded on receipt of the writ is

money of the Court in Government deposit and not his money, and, therefore, there can be no restitution and the writ itself has expired and

become infructuous. If the actual issue of writ was illegal and the pleader suffered damage thereby, it appears to us that he has his remedy by way

of suit in a Civil Court.

3. We are asked to hold that this proceeding cannot fall u/s 649 on the authority of the ruling in Tadhin Proshad Singh v. Sardar Coomar Narayan

Singh 10 C.W.N. 234. That case was the reverse of the present case. There the parties refused to pay the necessary fees and it was held that the

payment can be enforced by making the fees costs in the cause. Here there is no such remedy, and either Section 649, Civil Procedure Code, or

the inherent powers of the Court must be relied on. There can be no doubt that the Court had jurisdiction to order a refund. But it is now urged, as

it was urged in the case of Jogendra Chandra Sen v. Wazid-un-nissa 34 C. 850 : 11 C.W.N. 856, to which we have referred, that the Court has

no jurisdiction to enforce its own orders. Maclean, C.J. said in that case to which one of us was a party:"I hope that is not so and I do not think

that it is so. The Code is not exhaustive and it seems to me that when the Court had jurisdiction, as undoubtedly it had, to make the order, (in this

ease the refund of deposit improperly and illegally drawn), there is the inherent power of the Court to have that order carried into effect, otherwise

the order would be a farce."" But apart from his elementary principle which has now been incorporated in the Code, we see no reason why this

order should not be enforced u/s 649 of the former Code. That section lays down that the ordinary rules for execution as contained in Chapter

XIX shall apply to the execution of any judicial process for payment of money which may be desired or ordered by a Civil Court in any Civil

proceeding. The objection taken before us is that this process was not a judicial process. But if the order, to enforce which the process is issued, is

a judicial order, and it is issued with jurisdiction and the process is one recognized by the Code, it is a judicial process.

4. We are, therefore, of opinion that Section 649, Civil Procedure Code, applies to this case and that the appeal fails and must be dismissed with

costs.

5. We assess the hearing fee at two gold mohurs.