

(1869) 05 CAL CK 0006

Calcutta High Court

Case No: None

S.M. Padamani Dasi

APPELLANT

Vs

S.M. Jagadamba Dasi

RESPONDENT

Date of Decision: May 18, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to me that the plaintiff Padamani is not entitled to claim one-half of the sum realized under Jagadamba's execution. If she is entitled to half, I see no reason why she is not entitled to the whole, because she was a landlord entitled to the rent, and Jagadamba was an execution creditor. I see no greater reason why Padamani should be paid her rent out of the proceeds of the execution, than that Jagadamba should be paid hers, even supposing that the Statute of Anne is applicable to houses and lands situate in Calcutta. Although the law of England has been introduced into Calcutta, it is not every law of England that was so introduced. It appears to me that the Statute of Anne was applicable to lands and houses locally situate in England, and that Act, like many other Statutes, which apply to lands in England, was not part of the law of England, which was introduced into Calcutta. If it were necessary to determine the question on that ground alone, I should hold that the Statute of Anne did not apply. By section 89 of the Small Cause Court Act, Act VII of 1847, which regulates distresses for small rents in Calcutta, was extended to the recovery of all arrears of rent, not exceeding rupees 500; and by a subsequent Act XXVI of 1861, section 4, this law has been extended to rents not exceeding rupees 1,000. By virtue of the provisions of these three Acts taken together, no distress, except under the provisions of Act VII of 1847, can be levied for arrears of rent not exceeding rupees 1,000. If Jagadamba had proceeded under Act VII of 1847, and had applied to the Small Cause Court to issue a warrant for the levy of the amount due to her, she might have seized, under the warrant, all the goods which she did seize under her execution. Those goods might have been sold; and under the provisions of section 4 of Act VII of 1847, the whole amount of the produce must have been applied in satisfaction of the Rums, for which the distress had been levied under the warrant,

that is Jagadamba's distress. It appears to me that the Statute of Anne does not apply to a case like this, in which the claimant was seeking to enforce payment of her rent, not against an ordinary execution-creditor, but against another creditor for rent.

Macpherson, J.

Without expressing any opinion as to whether the Statute of Anne does or does not apply to Calcutta, I am of opinion that it does not apply to this case. The words of the Statute of Anne are that goods are not to be taken in execution, unless the party, at whose instance the execution is sued out, shall, before the removal of the goods from off the premises, pay to the landlord such sum of money as is due to him for rent, provided the arrears do not exceed one year's rent. The first question in this case is who is the landlord? It appears to me that Jagadamba was as much the landlord as Padamani, and that the provisions of the Statute of Anne cannot apply to a case like this.

Sir Barnes Peacock, Kt., C.J.

2. We shall answer the question of the lower Court, by stating that Padamani is not entitled to any portion of the sum realized by the execution-sale of Jagadamba, and that Jagadamba is entitled to her costs of this reference.