

(1879) 04 CAL CK 0001

Calcutta High Court

Case No: None

Doorga Doss and
Another

APPELLANT

Vs

Grish Chunder
Mundul and Another

RESPONDENT

Date of Decision: April 16, 1879

Citation: (1880) ILR (Cal) 494

Hon'ble Judges: Mitter, J; Birch, J

Bench: Division Bench

Judgement

Birch, J.

The facts found in this case are, that the plaintiff's obtained a decree against the defendant No. 3 for arrears of rent of a durpatni tenure due up to Choitro 1282 (April 1876), and in execution of that decree brought the tenure to sale on the 7th November 1876. The sale-proceeds amounted to Rs. 1,471, and the plaintiffs' decree for Rs. 211-1-6 was satisfied from the sale-proceeds, the surplus of Rs. 1,259-14-6 being left in deposit in the Court. Subsequently the plaintiffs obtained another decree for the rent of the tenure from Bysack to Assin 1283 (April to October 1876) against the same defendant for the first half of 1283, and in taking out execution of that decree, caused the surplus sale-proceeds standing to defendant's credit to be attached. The defendants 1 and 2 held two decrees against the same defendant, and they also attached the surplus sale-proceeds in execution of their decrees. A rateable distribution of the sum in deposit was made by the Court between the three attaching creditors, and under that distribution the plaintiffs obtained Rs. 556-9-6 as their share. They now brought this suit to recover from the other attaching creditors Rs. 372-12-6, being the difference between the amount of their decree and what was assigned to them by the rateable distribution. The Munsif dismissed the suit, holding that the plaintiff's decree against the defendant No. 3, after the tenure had been sold at their instance, was a mere money-decree, which could give the plaintiffs no priority over other attaching creditors. In appeal, the

Subordinate Judge has given the plaintiffs a decree. He says that the tenure was hypothecated for the rent payable to the plaintiffs, and that the surplus sale-proceeds of that tenure are in like manner hypothecated to the plaintiffs; that the same lien exists over the surplus value of the tenure as over the tenure itself; and that, consequently, the plaintiffs' decree for rent gives him priority over other decree-holders. By his order the defendants 2 and 3 are required to refund to the plaintiffs the amount claimed. A preliminary objection has been taken before us to the hearing of the special appeal. It is contended that the present suit being cognizable by a Court of Small Causes, no special appeal lies. We do not think that this contention is valid. This suit is for obtaining a refund of money taken by the defendants under an order of Court which the plaintiffs contend to be erroneous. Such a suit as this is not cognizable by a Court of Small Causes. It seems to us that the Subordinate Judge is quite wrong in saying that the tenure was hypothecated for the rent due thereon, and also in saying that upon the sale-proceeds the same lien exists as upon the tenure itself. After the tenure had been sold for the arrears accruing up to 1282 (1875), the plaintiffs could have no further lien upon it for arrears accruing subsequently. Such arrears must be regarded as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees. The surplus sale-proceeds stand to the credit of the defaulter, and like any other assets of his are liable to be attached in execution of outstanding decrees, and to be divided rateably amongst the judgment-creditors, who have taken out execution of decrees against the same defendant and not obtained satisfaction thereof. The plaintiffs' claim to priority over other judgment-creditors, by reason of their holding a decree for arrears of rent against the person in whose name the surplus proceeds are held in deposit, is not recognised by law; they stand in no better position than others who may hold personal decrees against the judgment-debtor. The decision of the Subordinate Judge must be set aside, and the order of the Munsif, dismissing the suit, be restored, the special appeal being decreed with costs.