
(1869) 06 CAL CK 0003

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 168 of 1869

Debkumari Bibi

APPELLANT

Vs

Ram Lal Mookerjee

RESPONDENT

Date of Decision: June 17, 1869

Judgement

L.S. Jackson, J.

This is an appeal against an order made by the Zilla Judge refusing to make an order at the instance of a judgment-debtor, u/s 243, Act VIII of 1859. It appears that the respondent, Ram Lal Mookerjee, holds a dur-mokurrari tenure of an estate held in mokurrari by the judgment-debtor, Debkumari. Debkumari having failed to make due payment of her rent to the zamindar, Ram Lal, in order to protect his own sub-tenure, paid the rent, and subsequently sued her, and obtained a decree against her for the amount. In satisfaction of that decree, he has attached the very property of which she holds the mokurrari, and of which he is her lessee. Upon this Debkumari petitioned the Judge, setting forth that she had this and other property which had been granted to her for her maintenance, and proposing to place this and the other estates in question under the management) of the Court; so that, after the payment of a small yearly sum for her maintenance, the profits should be carried to account towards the payment of the sum due under the decree; and thus, in the course of a few years, the whole amount could be satisfied.

2. The Judge has refused to make such an order, apparently upon two grounds. The first of those grounds is, that the judgment-debtor he says has other property, that is, other property than the property under attachment; and secondly he says that, as the profits of the mehal in question are only rupees 650 annually, if the prayer of the judgment-debtor were acceded to, the decree-holder would be kept out of his just dues for a long period, and would have to run the risk of bad collections and similar losses in the profits.

3. Now it seems to me, that the circumstance of the judgment-debtor being possessed of other property, instead of being a ground for refusing this prayer, ought rather to have been a ground for complying with it, because, if those were properties of inferior value,

and such as would be more conveniently dealt with for the purpose of saving this one, then that would be a good reason for staying the sale, and making such use of those other properties. The particular property under attachment is, I presume, the most valuable that this lady possesses. The Judge's observation that the decree-holder would have to run the risk of bad collections and the like, suggests to my mind that he has forgotten what the real relative position of the parties is. The risk of bad collections is one which the decree-holder has already taken upon himself, because he and not the judgment-debtor, is the party who is to collect the rents, and she has only to receive from him a fixed reserved rental every year. It seems, under these circumstances, that an arrangement by which the decree-holder, instead of paying his lessor, should pay himself annually, either after reserving, or without reserving, a sufficient sum for her maintenance, is one of obvious convenience.

4. An appeal against an order made under this section is one which the appellate Court must always have great difficulty in dealing with. I felt that difficulty so strongly, that I was compelled to dissent from the opinion of the Full Bench, in which it was held that such an appeal would lie. *Hanuman Prasad v. Ajodhia Prasad* 1 B.L.R. F.B. 7. From the circumstances of this particular case, the difficulty is not so great as it often would be. But even here I feel that it would be quite impossible for us to make any specific order; and under these circumstances I think all that we can do is to set aside the order of the Judge positively refusing to make an order u/s 243, and to remit the case to him with instructions, that the sale be stayed for two months, in order to enable the judgment-debtor to make a fresh application to him for an order u/s 243. It would be for her to show what the value and condition of the other property in her possession may be; and for the Judge to consider by what means, or by what arrangement, such a disposal of different portions of her property can be made, as, if possible, to avoid the sale of the property now under attachment. There are circumstances in the case which make it especially desirable that such an arrangement should be come to. We cannot shut our eyes to the fact that the decree-holder holds a tenure subordinate to that of his judgment-debtor, and that he may not improbably desire to get her out of the way, with the view, of course, to get her tenure into his own hands. At any rate I think it necessary, that the Judge should have an opportunity of re-considering this matter, and making such order as the justice of the case may require.

Markby, J.

I certainly must agree that it is not easy for us to deal with appeals from orders passed u/s 243. It is very difficult, it seems to me, for this Court to ascertain what the relative situation of the parties is. Under the circumstances of this case, I think the order proposed by Mr. Justice Jackson is the right one; namely, that the case should be sent back, in order that a fresh application should be made, and that in the meantime the sale should be stayed.