

Galstaun Vs Diana Sarkies

Court: Calcutta High Court

Date of Decision: May 21, 1928

Citation: 117 Ind. Cas. 854

Hon'ble Judges: Williams, J

Bench: Single Bench

Judgement

Williams, J.

This case started as an Originating Summons which was originally heard by my learned brother Mr. Justice Costello, who

made an order on the 6th of July, transferring it to the list of suits for hearing, and giving certain orders with regard to discovery, and evidence, and

reserving the question of jurisdiction.

2. The direction asked for under Rule 1, Chap. XIII of the Rules of the High Court comes under Sub section (e) of that rule or alternatively under

(b), the one directing executors, administrators, etc., to do or abstain from doing a particular act and the other concerning the ascertainment of any

class of creditor, and the principal direction asked for by the plaintiff in this case is a direction to the defendants the executrix and executor to admit

him the plaintiff as a secured creditor of the estate of C.M. Sarkies deceased.

3. I am of opinion that this procedure if allowed would simply amount to a way of avoiding the limitations imposed by the Letters Patent for the

High Court of Calcutta, 1865, which under Clause 12 ordain that the High Court in the exercise of its ordinary original civil jurisdiction shall be

empowered to try suits for land, if such land shall be situated within the local limits of the ordinary original jurisdiction of the said High Court.

4. The property in question in this suit is situated outside such local limits. It has been held by the High Court of Calcutta in the case of Kanti

Chunder Pal Chaudhry v. Kissory Mohun Roy 19 C. 361 that a suit for declaring any interest in land is a suit for land, and with this decision I

agree.

5. Before I could give the direction asked for, I should have to decide that the plaintiff was a mortgagee of the property, which would be a

decision declaring an interest in land and I am satisfied that such a decision would be beyond the powers conferred by the Letters Patent.

Therefore, I have no jurisdiction to entertain this suit which is accordingly dismissed with costs on scale No. 2.