

(1880) 12 CAL CK 0008

Calcutta High Court

Case No: None

Kristo Mohiney
Dossee and Others

APPELLANT

Vs

Kally Prosonno Ghose
and Another

RESPONDENT

Date of Decision: Dec. 7, 1880

Citation: (1881) ILR (Cal) 485

Hon'ble Judges: White, J

Bench: Single Bench

Judgement

White, J.

I have come to the conclusion, after some doubt, to make this rule absolute.

2. The object of the suit is to compel Kaliprosonno Ghose to pay, to the extent of the value of his share in a particular zamindari, the amount of a decree which has been passed against this estate.

3. It is unnecessary to consider the doubts as to whether the plaintiffs will be entitled at the hearing to that relief or any other relief in some qualified form, because, assuming that they could establish their right to any such relief, I consider that the plaintiffs have failed to show that the defendant Rutnessur Biswas, who is now executing the decree, ought to be stayed in consequence, supposing even that such an equity at all exists. The Appellate Court having decided that Rutnessur may execute his decree against the estate of Khelut, and not against the estate upon which a lien was declared by the decree, he cannot, in my opinion, be restrained from executing his decree, because he is exercising his own right, but when he does exercise that right, the plaintiffs can ask Kaliprosonno to recoup. The prayer of the plaint is not one upon which they can take this point, but I am not prepared to say that the plaintiffs may not at the hearing get the benefit under the prayer for general relief against the defendant Kaliprosonno Ghose.

4. It is objected that, having regard to the rules which govern this Court in granting injunctions, the rule should be discharged, because the Court is of opinion that the injunction could only be sustained where there is a specific prayer-Castelli v. Cook 7 Hare, 89. I am not prepared to give full effect to the rule asked for, but there are statements in the 18th and the following paras of the plaint, which show that certain transactions-have taken place between Kaliprosonno and Rutnessur, the result of which appear to me to be that Rutnessur has, out of the lien directed by the decree, derived some benefit or advantage, which benefit or advantage the plaintiffs ought to have valued, and such value set against the amount which they are bound to pay Rutnessur under the decree. This, however, does not form the subject of a separate prayer in the plaint.

5. It appears to me that there is a case made out that the defendant Rutnessur's execution should be controlled. I think this Court ought to control it and make the circumstance alluded to by Mr. Branson a consideration in dealing with the costs.

6. It is also objected, that as it appears that Rutnessur has been only executing the decree, the question raised by the plaintiffs as to partial discharge of the decree should be dealt with u/s 204 of the Civil Procedure Code. This is no doubt an argument to be adduced at the hearing, and I cannot at this stage of the case be called upon to decide that, nor could I dismiss the suit at this stage while this point is not decided. The money has been paid into Court by the plaintiffs, and that was one of the terms upon which this rule was obtained.

7. Now the question is, whether the execution-creditor is to be put upon some terms if he takes out the money before the final determination of the case.

8. Upon the fact appearing in the plaint that Rutnessur obtained a benefit which the plaintiffs ought to have in reduction of what is payable under the decree, viz., the value of an eight-anna share in patni lease in five villages without salamee, it may be that they are only entitled to whatever the amount of money was in the payment of which Khelut Chunder made default, and for which his estate was sold; but all this should be decided at the hearing. At all events, some benefit has been obtained which ought to go in reduction of the amount decreed.

9. Mr. Branson's client ought to have his costs.

10. The plaintiffs having paid into Court the amount of the decree and costs, plus Rs. 500 for costs of execution, this rule should be made absolute, and Rutnessur be restrained from prosecuting his execution-proceedings until the hearing of the suit or further order of this Court. Rutnessur to be at liberty to take the amount out of Court on furnishing security to the satisfaction of the Registrar. He will have his costs of showing cause against the rule.