
(1870) 01 CAL CK 0004

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 457 of 1869

Paresnath Mookerjee
and Others

APPELLANT

Vs

Binadiram Sen and
Others

RESPONDENT

Date of Decision: Jan. 6, 1870

Judgement

L.S. Jackson, J.

In this case there was an outstanding decree against the judgment-debtors, and it appears to have been ascertained by the Court, on the 13th July 1858, that a certain sum was due under the decree to the plaintiff. The decree-holder made an application to the "Subordinate Judge"s Court to execute such decree, or adjudication, by arresting the person of the judgment-debtor; and the judgment-debtor, thereon, paid into Court the amount for which execution was sought, with a petition in which be stated that the decree-holder was not entitled to interest, but only to the principal amount due; and he asked the Court to adjudicate the question of interest before paying the amount to the decree-holder. Afterwards, when the decree-holder sought to take this money out, and the matter came on for hearing, the judgment-debtor raised the plea of limitation; and the Subordinate Judge being of opinion that execution was in fact barred by limitation, refused to allow the decree-holder to proceed; and this order coming on appeal before the Zilla Judge, be remarked that the money had been paid into Court by the judgment-debtor for the use of the judgment-creditor; and when the debtor made the payment, he did not plead limitation. He proceeds:--"The judgment-" debtor has clearly paid what the law would not have compelled him to pay, but what in equity and conscience he ought to have paid. He cannot, therefore, recover back the money, or plead limitation, as he "now does for the first time, on 19th April 1869. In support of this judgment, the vakeel for the decree-bolder, special respondent, contends, that the payment of this money by the judgment-debtor was a voluntary payment; that it was a payment on account of the decree-holder; that it was charged with only one condition or protest, namely, that the decree-holder was not entitled to recover interest; and that,

consequently, the judgment-debtor is restricted to that one objection; and that objection failing, the Court must pay the amount to the decree-holder.

2. It seems to me that these contentions are unfounded. The judgment-debtor did not pay the money to the use of the decree-holder, but he paid into Court, under pressure of an application to arrest his person, a sum of money for the recovery of which the application was made, making at the same time but one objection, namely, that the decree-holder was not entitled to interest. But it seems to me quite clear that he did not thereby debar himself from making any other objection that might arise. He was entitled to be heard, and to take whatever objections of law or fact he could before the Court, previous to that money being paid away to the decree-holder; and the justice of this appears to me to be manifest, if we consider how impossible it would be for a party who is threatened with arrest, to consider every question and every objection that would be open to him to make, or to inform himself precisely upon every fact and every point of law that might arise.

3. It is not necessary to go beyond the actual point which arises in this case, and to consider what might be open to the judgment-debtor if this money had been actually paid to the judgment-creditor. It is sufficient to say that the amount was in deposit in Court, and that the Court was bound to pay that amount to the person entitled to it. The Court would not be justified in paying it to the judgment-creditor, if the judgment-debtor succeeded in making out any reason in law by which the judgment-creditor was restrained from recovering it.

4. It seems to me, therefore, that the case must go back to the lower Court, in order that it may try whether execution is barred or not.

Markby. J.

I am entirely of the same opinion. It seems to me that payment into Court under the pressure of the process of arrest in no way affected the rights of the parties. I think it is quite clear that it would have been so, if the money had been paid into Court simply without any protest whatever; and I think it makes no difference at all that a party, in paying the money into Court, protested as to one point, but was silent as to other grounds which he had to urge against process of execution being issued upon this decree.