
(1870) 02 CAL CK 0007

Calcutta High Court

Case No: Special Appeal No. 1674 of 1669

Saligram Sing

APPELLANT

Vs

Gobind Suhai and
Another

RESPONDENT

Date of Decision: Feb. 3, 1870

Judgement

Loch, J.

In this case the plaintiff sues to recover half of a sum of money, with interest and costs, recovered from him by the defendant. It appears that the plaintiff held an estate paying revenue to Government, and the defendant, Lalitram, in order to prevent the sale of that estate for arrears of revenue, paid in the whole amount of revenue due. He then brought an action against the plaintiff to recover the amount so paid by him, and obtained a decree in the lower Courts. Execution was taken out by the decree-holder, and the plaintiff paid in the amount due under the decree, which sum the decree-holder took away. A special appeal had been preferred by the plaintiff to the High Court, by which the rights of the parties had been declared; and it was held that both the plaintiff and the defendant were entitled to a moiety of the estate. The plaintiff then applied to the Court which executed the original decree to recover the money from the decree-holder. This application is said to have been rejected, and he now brings a regular suit to recover this money. We think, however, that the Court has no jurisdiction. The question of the kind now raised by the plaintiff is a question to be determined under the provisions of section 11, Act XXIII of 1861, and cannot be raised by a regular suit, and in support of this view we find two judgments of this Court.--Nursing Chunder Sein v. Bidyadhuree Dossee 2 W.R. 275; Jodoo Nath Gossain v. Nobokissen Chatterjee 4 W.R. 66, and in both of those cases, the Division Benches of this Court have held, that where a party seeks to recover money taken in execution of a decree which is afterwards reversed on appeal, such a case is not the subject of a new suit,--the matter must be enquired into by the Court which passed the decree as a question arising between the parties relating to the execution of such decree. We concur in the view then taken, and we, therefore, dismiss the appeal with costs.