
(1878) 08 CAL CK 0003

Calcutta High Court

Case No: None

Issurree Dassee

APPELLANT

Vs

Abdool Khalak

RESPONDENT

Date of Decision: Aug. 29, 1878

Citation: (1879) ILR (Cal) 415

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

In special appeal the decree-holder contends that, although in form the application of the 22nd of December 1874 was an application to execute the decree, in substance, under the circumstances of the case, it should be considered as an application to continue the old proceedings. We think that this contention is valid. It is true that the Court executing the decree disposed of the application of the 10th of July 1871, after the judgment-debtor's property was sold; but the effect of the subsequent order, dated 14th of May 1873, by which the sale was set aside and the decree-holder directed to refund the money which he had withdrawn from the Court, was to nullify all the proceedings taken on the application of the 10th of July.

2. We think the facts of the case clearly come within the principle of the decision quoted by the learned Judge--Baboo Pyaroo Tuhobildarinee v. Syud Nazir Hossein (23 W.E. 123); although, no doubt, the facts are not exactly similar: but the principle upon which that decision proceeds is applicable.

3. We think that, although in point of form the petition of the 22nd of December 1874 was an application to execute the decree, in reality it was simply an application to the Court to continue the proceedings already commenced by the application of July 1871. In this view it is clear that the application does not come within the provisions of Section 167 of the Limitation Act. The application to execute the decree in this case is that of the 10th July 1871. It is not disputed that that application was within time. We think, therefore, that the decree-holder's right to execute the

decree is not barred by limitation. We remand the case to the Munsiff to proceed with the execution of the decree. The decree-holder is entitled to the costs of this appeal.