
(1870) 04 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 111 of 1870

Mahes Chandra
Chattapadhya

APPELLANT

Vs

Guruprasad Roy

RESPONDENT

Date of Decision: April 28, 1870

Judgement

L.S. Jackson, J.

The question raised in this special appeal is, whether, in execution of a decree for arrears of rent, under Act X of 1859, the Collector has power to sell the right of the judgment-debtor to recover rent, being at that time due from the under-tenant. In the case before us, the superior landlord had recovered a decree for rent against Mr. Robinson, his lessee, and, in execution of his decree against him, he procured to be sold Mr. Robinson's right to recover rent against his under-tenant, Guruprasad Roy. It has been held by both the Courts below that rent was due, at the time when the sale took place, from Guruprasad Roy to Mr. Robinson; therefore, the only question is, whether the sale by the Collector, in execution of the Act X decree, gave the purchaser a right to sue for the rent. The Judge has held that it did not; but it seems to me that the Judge was mistaken in that view, and that the sale could be lawfully made, and is valid.

2. Section 86, Act X of 1859, has been re-placed by section 17, Act VI of 1862, B.C., and that section provides that--"the process of execution may be issued against either the person or property of the judgment-debtor, but process of execution shall not be issued simultaneously against both the person and property." And then section 87, Act X, provides,--"that any moveable property required to be seized under an execution, shall, if practicable, be described in a list to be furnished by the judgment-creditor;" and then the section goes onto say, "the property to be seized shall be pointed out to the officer entrusted with the execution of the process, by the creditor, or his agent." The question, therefore, is, whether rent due, being a debt, is included in the words "moveable property."

3. I find that in Act VIII of 1859, which was passed a very short time before Act X, debts due to the judgment-debtor, from the party answerable for the amount of the decree, are enumerated among the kinds of property which may be attached and sold; and are not therein reckoned as immoveable property, but are clearly classed as moveable. It is very unlikely that the Legislature, in passing about the same time two such Acts as Act VIII and Act X of 1859, should have used the same expression "moveable property," including under it debts and such matters in the one Act, and excluding them in the other. Act VIII of 1859 contains much more elaborate directions for attachment and sale than Act X contains. Act X seems, as it were, to compress into one or two sections all that is elaborately provided for in the various sections relating to that subject in Act VIII.

4. It is admitted that a landlord may assign his right to recover rent to a third party, and that such party, under the assignment, may proceed to sue for, and recover, this rent by suit under Act X of 1859. If that be so, we have not much difficulty in arriving at the conclusion that the Collector's Court might sell, under the denomination of moveable property, that which the landlord himself might assign by private sale.

5. We have been much pressed by a decision in *Chandrakant Bhattacharjee v. Jadupati Chatterjee* 1 B.L.R., A.C., 177, in which it is contended that the Court laid it down that a Collector's Court is incompetent to sell, in execution of a decree under Act X of 1859, the rights of the judgment-debtor in any suit. It appears to me that the decision of the Court in that case went by no means so far as the respondent's vakeel contends before us to-day. (Here the learned Judge recited the facts, and read the judgment of the Court upon the point, in the case of *Chandrakant Bhattacharjee v. Jadupati Chatterjee* 1 B.L.R., A.C., 177. Baboo Mahendra Lal Seal for the respondents has read to us a passage from Mr. Warren's *Blackstone*, in which rents are described as incorporeal property. It seems to me that this definition does not press us to decide the point. It is sufficient to say that rents seem to me to come, for the purposes of Act VIII, as well as of Act X of 1859, within the terms "property," and "moveable property;" I think, therefore, that the Collector was competent to sell these rents, and that the purchaser by that sale acquired a legal title to recover the rents, and that he was competent to maintain the suit; and was, therefore, entitled, the rents being due, to a decree. I think, therefore, that the decision of the lower Appellate Court must be reversed with costs.