

(1869) 05 CAL CK 0031

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 115 of 1869

Gupinath Roy and Another

APPELLANT

Vs

Dinabandhu Nandi and Others

RESPONDENT

Date of Decision: May 15, 1869

Judgement

L.S. Jackson, J.

In this case, the special appellants before us, Gupinath Roy and another, gained a decree against Dinabandhu, that is to say, he was entitled to recover the costs of the suit in which he was defendant. Dinabandhu had another decree under which he was entitled to recover 138 rupees against Gupinath. On these decrees coming for execution before the Munsiff in whose Court they were, the parties by mutual agreement caused satisfaction to be entered of both decrees. Notwithstanding this, Gupinath proceeded with an appeal against the decree on which he was liable, and obtained a reversal of that decree. Having done so, he applied to the Munsiff for execution of his own decree, inasmuch as that which had been set off against it having been set aside, he considered that he was entitled to execute his decree, without reference to what had passed. The Munsiff took this view of it, and ordered execution to proceed. The Judge, when the case came before him on appeal, found that the Munsiff had on a first application declined to allow this execution. but that subsequently he reviewed his order, and admitted execution. The Judge considered that the lower Court was not competent to review its first order, and also that the decree-holder, Gupinath, ought to have prosecuted his remedy by a regular suit. So he reversed the order of the Munsiff. As the matter now stands, it appears to me that we have no choice but to affirm the order of the Judge, because the decree holder, Gupinath, merely applied to execute his decree, on the ground that the cross-decree had been set aside, and that there was nothing to set off. To this bare statement, it appears to me that the opposite party had an amply sufficient answer in pointing to the entry of satisfaction upon the back of that decree. It is probable that if Gupinath had made an application to the Court supported by an affidavit, getting out the whole of the circumstances, showing how it happened, that

notwithstanding the adjustment an appeal had proceeded, proving that his conduct in carrying on the appeal had been bona fide and honest, and showing that in fact the order of adjustment had been obtained by mistake and contrary to the real intention of the parties, his execution might have been allowed to proceed. But he did nothing of the sort. He simply relied on the fact that the other decree had been set aside, and on that statement merely he asked for execution of his own decree. I do not think on such a statement he ought to have been allowed to execute. I therefore think that the special appeal must be dismissed with costs.

Markby , J.

I am of the same opinion.