

(1868) 12 CAL CK 0011

Calcutta High Court

Case No: None

Pran Bandhu Sircar

APPELLANT

Vs

Sarbasundari Debi and Others

RESPONDENT

Date of Decision: Dec. 4, 1868

Judgement

Phear, J.

It appears to us that this case lies within a very small compass. It seems that the plaintiffs' ancestor, through whom she claims, purchased the tenure, which is the subject of suit, at a sale which took place on the 2nd of December 1865, in execution of a decree of a Civil Court passed against the then owner, Mohammed Ishak. On the 23rd of August 1866, the defendant, appellant, bought the same tenure at an auction-sale, which was held in execution of a decree made by the Deputy Collector against the same Mohammed Ishak. This decree had been obtained by the zamindar on account of arrears of rent due to him from Mohammed Ishak, before the sale by the plaintiffs' ancestor, in December 1865. Now the sale of the plaintiffs' ancestor, Ram Sankar, is not in any way impeached before us. The first decree against Mohammed Ishak, for all that has been made out before us was a valid decree of the Civil Court, and that Court, therefore, had power, in execution, to sell Mohammed Ishak's rights and interest in this property, because, by the very case of the defendant himself it was a transferable tenure. That being the case, the only question before us is, whether the Deputy Collector had power by law in proceeding to execute his decree against Mohammed Ishak which was passed before this sale to Ram Sankar, to seize the tenure, which had become the property of Ram Sankar, and to sell it. The power which a Revenue Court has in this behalf, is given to it by the provisions of section 105, Act X of 1859, and we think that those provisions only enable the Revenue Court to seize and sell that which at the time is the property of the judgment-debtor. There is nothing in the whole Act, as we read it, to indicate that the Legislature contemplated for a moment that the property of any other person, than the judgment-debtor should be sold for the debt of the latter, even though that property had previously been the property of the judgment-debtor. And

we observe that, in the latter part of section 105 itself, there is language used, which, by implication, satisfies us that the Legislature, in giving this power of sale to the Court, intended it to apply only to the existing property of the debtor. The words which we refer to are these:-- "If, after sale of an under tenure, any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor." It seems to us obvious that, in using the words "other property," the Legislature clearly showed that it regarded the tenure which it had made liable to sale, as being the property at the time of the judgment-debtor.

2. Taking it on the facts of this case, as they have been read to us, that at the date of that sale by the Deputy Collector, in execution of his decree against Mohammed Ishak, the tenure in question had duly passed away from Mohammed Ishak to Ram Sankar, and become the property of Ram Sankar; the interpretation which we put upon section 105 leads us to hold that the Deputy Collector had no power by law at that time to sell the tenure, which is the subject of suit, and consequently the defendant obtained no title by being a purchaser at the Deputy Collector's sale. The previous title of the plaintiff must therefore necessarily prevail against him. The appeal consequently is dismissed with costs.