

(1866) 08 CAL CK 0007

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 277 of 1866

Fakir Chand

APPELLANT

Vs

Girishchandra Lahury

RESPONDENT

Date of Decision: Aug. 22, 1866

Final Decision: Dismissed

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears that these two decrees were not decrees of the same Court. There was a decree of the Principal Sudder Ameen, and the other was a decree of the Judge. If one of these had not been assigned, the question would be, could the amount of the decree in the Judge's Court be deducted from that in the Principal Sudder Ameen's Court, under the provisions of s. 209 of the Code of Civil Procedure? The words are:-- "If there be cross-decrees between the same parties for the payment of money, execution shall be taken out by that party only who shall have obtained a decree for the larger sum, &c." In this portion of the section it is not expressly stated whether the section refers to cross-decrees of the same Court, or cross-decrees between the same parties in whatever Courts they may be. But the words of the first paragraph are explained by the second paragraph of the same section, which says:-- "The above rules shall apply to decrees sent to a Court for execution, as well as to decrees of the same Court." That shows that the meaning of the whole section was that, if there be cross-decrees in the same Court between the same parties, they shall be set-off one against the other, and that the same rule shall apply to decrees sent to a Court for execution. In this case the decree of the Judge's Court was not sent to the Principal Sudder Ameen for execution, nor was the decree of the Principal Sudder Ameen sent to the Judge's Court for execution. The case, therefore, does not fall within the provisions of s. 209. It is, therefore, unnecessary for us to determine whether the assignment made any difference or not. If we were to determine that point, our decision would be a mere obiter dictum. If there had been no assignment of the decree in the Principal Sudder Ameen's Court, that decree might have been attached in execution of the decree of the Judge's Court. If the

assignment was fraudulent, it would not affect the right to attach it. If the decree attempted to be set-off had been obtained in another zilla, and could not be enforced within the jurisdiction of that Court, it might have been sent for execution to the Court of the Judge of Rajshahye, and the decree of the Principal Sudder Ameen might, in like manner, have been attached in execution if it had not been assigned, or had been assigned for a fraudulent purpose.

2. This decision renders it unnecessary for us to send back the case to the Division Bench who referred it. The appeal is, therefore, dismissed with costs.