

(1878) 04 CAL CK 0010

Calcutta High Court

Case No: None

Hasoon Arra Begum
and Another

APPELLANT

Vs

Jawadoonnissa
Satooda Khandan and
Others

RESPONDENT

Date of Decision: April 5, 1878

Citation: (1879) ILR (Cal) 29

Hon'ble Judges: R.C. Mitter, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

We think that in the present case there can be no doubt that a suit does lie for the purpose of recovering the money which the plaintiff alleges to have been wrongly paid to the defendants under colour of an order made u/s 271 of Act VIII of 1859. We also think that the fact that the money was paid out of Court after the institution of the suit is one of no importance, although the plaintiff did not put in a petition by way of amendment to the plaint.

2. It is unnecessary to comment upon the order made by the Subordinate Judge u/s 92 of the Code; but we think it quite clear that this case must now be taken as a suit to recover from the hands of the defendant money paid over to him by the Court during the pendency of the suit.

3. The third issue has been treated by the Subordinate Judge as one involving only a question of law. This appears to be an error. The question whether the decree of the Shahabad Court could bind the property in the district of Sarun is not purely one of law. It depends on certain facts. The plaintiff was, probably, justified in the first instance in assuming that a decree made by a Court was a valid decree made within the legal exercise of its jurisdiction, and that until that was disputed it was unnecessary for him to be prepared with evidence to establish the jurisdiction of the

Court.

4. The case was set down for final hearing on the 2nd of May 1876, and the written statement of the defendant was then put in. Consequently, until that written statement was filed, the plaintiff had really no notice that it could be at all necessary for him to make enquiries as to the power of the Shahabad Court to deal in any way with this property. Therefore, it seems to me that the Subordinate Judge was over-hasty in disposing of the third issue in the mode in which he did: but this is really not a matter of any particular importance.

5. A Full Bench decision of this Court--Emam Momtazooddeen Mahomed v. Rajkoomar Dass 14 B.L.R. F.B. 408--has determined that the mere fact of a money decree having been obtained on a bond by which property is hypothecated does not destroy the lien on that property, and therefore if the plaintiff has any right that right may be established on the bond as well as on the decree.

6. The main contention for the respondent was, that this was an order made u/s 271, and that as the order for distribution has in fact given to the plaintiff somewhat more than a properly made order for distribution among the twenty-four claimants would have given, there is no right in the plaintiff to sue to set aside that order. I have in a previous case expressed my opinion, and I see no reason now to alter it, that the purport of Sections 270 and 271 of the Procedure Code is not to alter or limit the rights of parties arising out of a contract, but simply to determine questions between rival decree-holders standing before the Court on the same footing, and in respect of whom there is no rule for otherwise determining the mode in which the proceeds of property sold in execution shall be distributed.

7. The case will, therefore, have to go back to the Court below for enquiry as to the value of the security held by the plaintiff. In determining that value the Subordinate Judge must take into account the value of all the six properties sold in Sunt Lall's execution, and ascertain the proportion that the value of Chantaparsa factory bears to the whole. The plaintiff's security will bear the same proportion to the whole of the surplus sale-proceeds that the value of Chantaparsa factory bears to the value of the six properties.

8. Costs will follow the result.