
(1870) 02 CAL CK 0009

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 338 of 1869

Dinanath Das

APPELLANT

Vs

Jadab Chandra Toi
Paramanik

RESPONDENT

Date of Decision: Feb. 9, 1870

Judgement

Jackson, J.

It appears that the special respondent, Dinanath Das Sirkar, obtained a decree in the Court of the Dewan Ahilkar of Cooch Behar, against the special appellant, Jadab Chandra Toi; and on his application the decree was sent to the Judge of Rajshahye for execution in that district. The Judge of Rajshahye sent it to the Moonsiff of Shahazadpoor. Notice was issued to the judgment-debtor, and his property attached. He thereupon objected that the decree having been passed by the Court of the independent state of Cooch Behar could not be executed by the Rajshahye Court. The Moonsiff held that this objection was valid; that the Court of the Dewan Ahilkar of Cooch Behar was not a civil Court within any part of the territory of British India, and was not a Court established by the authority of the Governor-General of India in the territories of a foreign state, within the terms of section 284, Act VIII of 1859; and that, consequently, he, the Moonsiff of Shahazadpoor, had no jurisdiction to entertain the execution of the decree.

2. On appeal, the Judge of Rajshahye has reversed the order passed by the Moonsiff. He was satisfied that Cooch Behar was within the territories of the British Government in India; that there had been reciprocity in execution of decrees between the Courts of the Rungpore district and that of the Dewan Ahilkar of Cooch Behar, and he, therefore, ordered the execution of the decree to proceed.

3. On special appeal, it is said that the Judge was in error; that there was no evidence to show that the Dewan Ahilkar's Court was a Court within the territories of British India; that it was a Court of the native state of Cooch Behar; and that unless the Court was such a Court, as is mentioned in section 284, Act VIII of 1859, the Moonsiff could not execute the decree.

4. We think that the Moonsiff was right. The only rules for execution of decrees by a Court other than that which passed the decree, are those laid down in section 284, Act VIII of 1859. The Judge of Rajshahye seems to be in error in holding that the Court of Dewan Ahilkar of Cooch Behar is a Court within British territories. It is a Court of the native state of Cooch Behar, and it is not shown that it is even established by the authority of the Governor-General" in that foreign state. The decree-holder must show that the Moonsiff of Shahazadpoor has jurisdiction to execute the decree u/s 284, Act VIII of 1859. He appears to have altogether failed to do this, and his pleader is unable to satisfy us on this point. The order passed by the Judge of Rajshahye must, therefore, be reversed. The decree-holder must pay all the costs in the Courts below and this Court.