

(1880) 02 CAL CK 0005

Calcutta High Court

Case No: None

Beerchunder Manikya

APPELLANT

Vs

Maymana Bibee and
Others

RESPONDENT

Date of Decision: Feb. 27, 1880

Citation: (1880) ILR (Cal) 736

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

In this case the decree was transferred for execution from the Court of the Munsif of Ramroygram, Zilla Tippera, to the Court of the Munsif of Begumgunge in Zilla Noakhally. The decree-holder applied to the Munsif for execution by sale of the Immovable property of the judgment-debtor. The Munsif allowed the application. On appeal the Judge dismissed it, on the ground that, as the provisions of Section 65 of the Rent Law were applicable to the case, the decree-holder ought first to have shown that he was unable to obtain satisfaction by execution against the person or Immovable property of the debtor,

2. This, we observe, is the condition precedent which the law enjoins "within the district in which the suit is instituted" before a judgment-creditor can take out execution against the Immovable property of his debtor. But in the present instance the application for execution against the Immovable property of the debtor was not made within the district in which the suit was instituted. It was made before the Munsif of Begumgunge, who should have presumed that the decree would not have been transferred to his Court for execution if satisfaction of the judgment could still be obtained within the jurisdiction of the Munsif of Ramroygram against the person and Immovable property of the debtor. Coming, as the application did, not to the Court within the district in which the suit was instituted, but to another Court within another district, it was no part of the duty of the latter Court to apply to it the

provisions of Section 65. Moreover, if the Munsif of Begumgunge had gone, as the Judge considers that he ought to have gone, behind the order of the Court which sent the decree for execution, he would have acted ultra vires, for clearly he had no jurisdiction to determine, as by deciding u/s 65, he would necessarily have determined the correctness and propriety of the order under which the decree was sent to him for execution. If the Munsif of Begumgunge thought that there was any force in the objection of the debtor u/s 65, and that sufficient cause was shown for so doing, he should have followed the course prescribed in Section 239 of the Civil Procedure Code, and stayed the execution of the decree for a reasonable time, to enable the debtor to apply to the Court of the Munsif of Ramroygram. But the judgment-debtor's pleader, when challenged, was unable to indicate that there were any other means of satisfying the decree.

3. We, therefore, set aside the order of the Judge, and restore that of the Munsif, and direct that execution do follow in accordance with the said order.