

(1865) 06 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 2001 of 1864

Mohan Mandar

APPELLANT

Vs

Sitaram Sahu

RESPONDENT

Date of Decision: June 20, 1865

Judgement

Sir Barnes Peacock, Kt., C.J.

This is a very clear case. The plaintiff sues to set aside an execution and a sale under it. He was a purchaser of a decree from the defendant, Sitaram. It appears that Sitaram had obtained a bond from Chumaran and others by which the lands in question were pledged to Sitaram. Sitaram sued upon that bond and obtained a decree for the sale of those lands. Previously to the decree being obtained, and whilst the suit of Sitaram was pending, the plaintiff purchased from Chumaran and others (the defendants in that suit) the lands in question; and in order to prevent the lands which he had so purchased from being taken in execution of the decree, the plaintiff purchased the decree from the defendant, Sitaram, and that fact (as has been found by the Court of first instance) was not disputed. Having sold the decree to the plaintiff, the defendant, notwithstanding, took out execution as he would have done if the decree had not been sold, and then he says to the plaintiff, you cannot upset my execution, because you did not comply with Construction No. 1341 of the 17th June 1842. But that Construction was never intended to enable a person in the position of the defendant, Sitaram, to commit a fraud by first selling a decree and suing out execution upon it. We think that the decision of the first Appellate Court must be affirmed with costs.

(¹) Construction No. 1341 of 17th June 1842.--Held, on a reference from the Judge of Futtehpore, that, in the event of A. endorsing over a decree passed in his favor to B., it is essential to the formal recognition by a Civil Court of such a transfer that A., the transferring party, should certify in person, or by mookhtear appointed for the special purpose, either verbally, or by petition, his having made the transfer to B., whose name should there be inserted in place of that of the original decree-holder

in the execution of decree process.

Calcutta, 17th June 1842.

Constructions of Regulations and Acts from 1793 to 1847, 550.

See Act VIII of 1859, ss. 206, 208.

⁽²⁾ The ground of appeal stated in the case.