

(1881) 03 CAL CK 0009

Calcutta High Court

Case No: None

Fakuruddeen
Mahomed Assan

APPELLANT

Vs

The Official Trustee of
Bengal

RESPONDENT

Date of Decision: March 28, 1881

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 12

Citation: (1881) ILR (Cal) 82

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

Bench: Division Bench

Judgement

Morris, J.

We agree in the view of the law that has been laid down by the District Judge of Pubna, and consider that the Pubna Court can, upon the certificate that has been sent to it, execute the decree of the Furridpore Court. The circumstance that the judgment-creditor, in order to secure property of the judgment-debtor, which was in a foreign territory, viz., Chandernagore, has obtained a decree in the Chandernagore Court on the basis of the decree of the Furridpore Court, does not, in our opinion, constitute a bar to the execution of the latter decree. The foreign Court does not stand in a higher position than the British Court, so that a decree of the latter should be merged in that of the former. According to the explanation given in Section 12 of the Procedure Code, "the pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action." It seems to follow, therefore, as a necessary consequence, that the existence of a decree in a foreign Court is no bar to the execution of a decree of a Court in British India, even though the cause of action in both suits be the same.

2. Nor does it follow, as has been contended, that such concurrent decrees work injustice in the matter of their execution to the judgment-debtor, for any payment

made in satisfaction of the decree of the Chandernagore Court, can, under the procedure prescribed in Section 258 of the Civil Procedure Code, be at once certified to the Pubna Court, and the amount placed to the credit of the judgment-debtor. In the event of execution of the two decrees being taken out simultaneously, it would be open to the judgment-debtor to bring this circumstance to the notice of the Court, and the Court would, doubtless, exercise its discretion in the manner indicated by the Privy Council in the case of *Saroda Prosaud Mullich v. LuchmEEPut Sing Doogur* (14 Moore I. A. 529; S. C., 10 B. L. R. 214). But no hardship of this kind exists here. It is not suggested that execution has issued and property of the judgment-debtor is about to be sold by the Chandernagore Court. Even if this was the case, the judgment-debtor could, as already mentioned, secure himself from loss by certifying to the Pubna Court the payment of the sale-proceeds to the judgment-creditor. We, therefore, dismiss the appeal with costs.