

(1881) 03 CAL CK 0010

Calcutta High Court

Case No: None

Radha Kissoore Bose
and Another

APPELLANT

Vs

Aftab Chundra
Mahatab, Maharaja of
Burdwan

RESPONDENT

Date of Decision: March 17, 1881

Citation: (1881) ILR (Cal) 61

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

Bench: Division Bench

Judgement

Cunningham, J.

In execution of the decree which forms the subject of this appeal, the Subordinate Judge, on the 29th February 1868, found, that the property under attachment being debutter could not be sold, but while exempting it from making them applicable towards satisfaction of the decree. His order directed the mukuraridar, the lessee of the judgment-debtors to pay his rents to the decree-holder. The terms of this order may be somewhat informal, but, as we understand them, they amounted to an appointment of the decree-holder to be a receiver u/s 243, Act VIII of 1859, without the direct intervention of the Court, as is usual between the receiver and the decree-holder.

2. These collections were made up to the end of 1284 (April 1878), that is, for about ten years. For some reason or other the decree-holder then had some difficulty in realizing his rents, and he has been badly advised to apply to the Court for re-execution of his decree against the judgment-debtors, instead of acting under the authority of the order of February 1868, and he has asked for an order directing the mukuraridar to pay the rents for 1285 and 1286.

3. The judgment-debtors have, accordingly, pleaded limitation in bar of further execution of this decree.

4. The Subordinate Judge has disallowed this objection, holding that the matter now before him was not in execution of the decree, but simply one between the decree-holder and the Court, the decree being under execution in the hands of the Court; and that, under such circumstances, there could be no limitation. We think that this view of the law is correct. The property is still under attachment, and the Court has itself undertaken the duty of ♦satisfying the decree from the usufruct of the property by appointing a receiver. The decree-holder, qua decree-holder, is powerless. He is merely the recipient of money deposited at his credit in the Court. In the present instance, through the accident that the decree-holder has himself been appointed receiver, payments are made without the direct intervention of the Court; but they are, nevertheless, from time to time, certified to the Court, since the decree-holder has been ordered to submit his accounts to the Court.

5. The proceedings in execution under the order of February 1868 have never yet terminated, and therefore no question of limitation arises.

6. The case of Hurrenath Bhunjo v. Chunni hall Ghose I. L. R. Cal. 877 which was relied upon by the judgment-debtors" pleader, both before the Subordinate Judge and before this Court, is not in point. The Subordinate Judge has rightly distinguished this case, which was one in which, by private arrangement, the judgment-debtor agreed to satisfy the decree by monthly payments without any intervention of the Court. The proceeding in execution then terminated, so far as they were conducted through the Court, and when it was sought to revive them, it was found that they had become barred by limitation.

7. No doubt, the form which the present proceedings have taken at the instance of the decree-holder is, as I have already pointed out, irregular, for there was no necessity to apply for execution of the decree or to bring the judgment-debtors before the Court. The judgment-debtors would, therefore, ordinarily be entitled to their costs, but they have chosen to plead limitation both in the lower Court and before us in appeal, and as that plea has been rejected we cannot give them any costs.

8. We, therefore, dismiss this appeal, but without costs.