
(1881) 03 CAL CK 0011

Calcutta High Court

Case No: None

Nilmoney Singh

APPELLANT

Vs

Heera Lall Dass

RESPONDENT

Date of Decision: March 14, 1881

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 13

Citation: (1881) ILR (Cal) 23

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

Bench: Division Bench

Judgement

Cunningham, J.

In this case, in a suit for rent, an endeavour is made to use an ex parte decree obtained by the plaintiff as conclusive evidence against the defendant as to the amount of rent.

2. The defendant denies all knowledge of the decree; and the first Court considered the alleged execution to be fraudulent. The lower Appellate Court considered that the ex parte decree "was not good evidence" of the amount of rent; and, in the absence of any other sufficient evidence, it dismissed the plaintiff's claim. We think that this view is correct. The decree being ex parte is not "final" within the meaning of expl. 4, Section 13 of the Code of Civil Procedure, so long as it is open to the Court, on the application of the parties, to modify it. As in this case the alleged execution was held to be fraudulent, and no proceedings had been had which gave finality to the decree, we think that the lower Appellate Court was right in holding that, in the absence of any proof of execution, the defendant was not precluded by the existence of the decree from contesting a question with which it dealt.

3. Our present decision does not conflict with that in *Birchunder Manickya v. Hurrish Chunder Dass* ILR Cal. 383 inasmuch as the question here is whether the plaintiff had a right to use the ex parte decree as conclusive evidence.

4. The appeal is dismissed with costs.