

(1865) 02 CAL CK 0001

Calcutta High Court

Case No: Summary Special Appeal No. 553 of 1864

Kowar Bijoi Kesal Roy Bahadur

APPELLANT

Vs

Samasundari and Others

RESPONDENT

Date of Decision: Feb. 27, 1865

Judgement

Norman, Officiating C.J.

1. The question is whether the plaintiff was entitled to be put in actual possession of his share in the dwelling-house. We think it quite clear that section 224 has no application to the present case. The defendant, Samasundari, is not "a person entitled to occupy the house" as against the plaintiff, who has obtained a decree for possession.

2. The case of Ramtanu Chatterjee and Govind Chunder Chatterjee v. Issurchunder Neogee S.D.A., 1857, p. 1585, is a direct authority, if any be needed, to show that the plaintiff, as purchaser in execution of a decree, is entitled to actual possession of that which he has bought. If the petitioner is subjected to any inconvenience, she has only herself to blame. She might have purchased the shares of the execution-debtors at the sale, or sued for partition, instead of resisting to the uttermost the claim of the purchaser and setting at defiance the decrees of the Court. In the case of Kesubnath Ghose v. Hurgovind Bose S.D.A., 1853, p. 768, the Court pointed out that, in execution of the decree, an ameen may divide joint property upon the same principle as that on which batwaras are made, and on that principle possession of a portion of the dwelling-house equivalent to a 6-anna 8-ganda share must be set apart and given to the plaintiff, the apportionment being made in such a manner as to cause the least possible inconvenience to the defendant.

Trevor, Loch and Bayley, JJ., concurred.

Kemp, J.

3. The question now before us is, how this decree is to be executed? The decree-holder asks for a share equal to a 6-anna 8-ganda share in every room and corner; this much, however, my learned colleagues are not prepared to allow. I think, with reference to Hindu customs and prejudices, that it would be inequitable to permit a stranger to intrude himself upon the privacy of a joint Hindu family residence,--more especially, when, as in this instance, that stranger is actuated by motives of enmity. The decree-holder, on suing for possession, valued the land round the house at three times that of the house itself, and yet he refuses, though the opposite party are willing, to take his share out of the land, but insists upon intruding upon the house. If we permit him to do this, we shall be encouraging the decree-holder in his animosity, and he driving the other members of the family to leave their ancestral home. I would direct the Court below to depute an ameen to mark off in one spot from the land attached to the house a 6-anna 8-ganda share with an equivalent in value of a share of that extent in the house to be taken from the land.