
(1870) 02 CAL CK 0015

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 314 of 1869

Nimdhari Sing and
Others

APPELLANT

Vs

Kanchan Sing and
Another

RESPONDENT

Date of Decision: Feb. 10, 1870

Judgement

Markby, J.

This case arose out of a proceeding on a decree dated 15th December 1860. The decree was in favour of Narattam Sing and others, plaintiffs, against Kanchan Sing and Harihar Sing, defendants. The decree, strangely enough, is not before us; but it is admitted that it was a decree against the defendants for certain money, costs and interest; that it declared the plaintiffs' title in certain immoveable property; and that it contained a direction to the Collector to register the names of the plaintiffs in his books as owners of the property. On the 8th January 1865, an application was made to the Court which passed the decree, that an order should issue to the Collector to register the names of the plaintiffs in his books as directed by the decree. The order was made accordingly ex parte, and without notice to the defendants, and was sent to the Collector, with the decree, on the 18th April 1865. On the 13th May, the defendants came into Court, and objected to this order, on the ground that it was a proceeding in execution of a decree, which was already barred under the provisions of section 20 of Act XIV of 1859. Upon this being brought to the notice of the Court, the Principal Sudder Ameen, on the 7th June, withdrew his former order, and sent an intimation to the Collector not to carry it out. The plaintiffs who opposed this last application were ordered to pay the costs. It appeared, however, that the Collector had, on the 24th day of June, already entered the plaintiffs' names as owners in his books in accordance with the decree, and he informed the Principal Sudder Ameen that he had done so. The plaintiffs, however, thought proper to appeal to the Judge, against the withdrawal by the Principal Sudder Ameen of his former order, which appeal was dismissed on the 11th September 1865 with costs. Matters then remained in status quo until the 8th August 1868, when the defendants applied to the

Officiating Subordinate Judge (who had succeeded the Principal Sudder Ameen who made the former orders) for the arrest of the plaintiffs for the costs which they had been ordered to pay on the 27th June 1865 by the Principal Sudder Ameen, and on the 11th September 1865 by the Judge. The defendants, at the same time, applied that an order might be sent to the Collector directing him to substitute their names, for those of the plaintiffs, in his books. The Subordinate Judge refused to send any order to the Collector, but granted the order for arrest in respect of the costs. The Judge, on the appeal of the defendants, ordered the Collector to erase the names erroneously entered on his register under the order of the 18th April 1865, and to restore the names as they stood on that date.

2. The plaintiffs have now appealed to this Court, on the ground that the Judge had no jurisdiction to make the order which he did upon the Collector.

3. I think this is a good ground of appeal. The parties were unable to point out the provisions of the law on which they relied. The only provisions of the law which I have been able to discover upon this subject are those contained in Regulation XLVIII of 1793, section 24, and Regulation IV of 1793, section 9, which positively direct the Zilla and City Courts to transmit their decrees to the Collector, but give no power whatever to those Courts to make any orders on the Collector, as to how he is to enter the result of those decrees in his books. That part of the order of the Judge, therefore, which directs the Collector to erase certain names was made without jurisdiction, and must be set aside, but, under the circumstances, I would give no costs. The proceedings seem to have been misconceived throughout.

Bayley, J.

I think the Judge was wrong, as section 20, Act XIV of 1859, bars the issue of this order of the Judge of 7th June 1865 in reversal of his order of the 18th April 1865.