
(1870) 02 CAL CK 0016

Calcutta High Court

Case No: Miscellaneous Appeal No. 346 of 1869

Oudbehari Lal

APPELLANT

Vs

Brajamohan Lal

RESPONDENT

Date of Decision: Feb. 4, 1870

Judgement

Bayley, J.

We are of opinion that, as the decree in this case stands upon the record as an ijmalī, i.e., joint decree, and as no other decree altering or modifying the character of that ijmalī decree can be shown to us, the ijmalī decree must be considered in that light only. It is pressed upon us that the first Court has clearly mentioned the fact that the decree-holder and Goverdhan Lal, his partner in the decree, by their mutual consent, filed a petition in Court, and each got his half share in the decree separated; but no such petition or order can be shown to us in the papers on the record. Speaking for myself, I doubt very much whether such a petition or order without an amended decree would be sufficient to alter the nature of the original ijmalī decree. Nobinchunder Bose v. Radhabullub Ghosain S.D.A. (1856), 248, and Brijo Coomar Mullick v. Ram Buksh Chatterjee 1 W.R. Mis. 1 have been cited to us, which to a certain extent support the contention of the special respondent; but I am clearly of opinion that all the later rulings of this Court have been to the effect that a decree must stand in its original character as a final decree, until it is shown that it has been amended by or substituted for another decree; and that if there is any proceeding taken to enforce the ijmalī decree by any one of the judgment-creditors, within the period allowed by section 20, Act XIV of 1859, it is sufficient to keep the whole decree alive.

2. I am of opinion, therefore, that the judgment of the lower appellate Court, holding that the execution taken by the other judgment-creditor did not keep the appellants share of the decree alive, must be reversed, and the case remanded to that Court for trial as to whether the proceedings taken by the other judgment-creditor have kept the present decree alive. Each party should be allowed to adduce evidence. We think, under the circumstances the appellant in this Court is entitled to his costs.

I am entirely of the same opinion, and I place my judgment upon the same ground. It seems to me that when a question arises u/s 20, Act XIV of 1859, the Court must be guided by the decree that was originally drawn in the case, and not by any arrangement that the parties may have subsequently entered into as-between themselves; and I think that, under the recent rulings of this Court, we are bound to hold that, in the case of a joint decree, any bona fide proceeding taken by any one of the decree-holders is a sufficient proceeding within that section to keep the whole decree alive. I do not mean to say that any subsequent arrangement between the parties such as is referred to in *Nobinchunder Bose v. Radhabullub Ghosain S.D.A. (1856)*, 248 and *Brijo Coomar Mullick v. Ram Buksh Chatterjee 1 W.R. Mis. 1* may not be taken into consideration by the Court, when the Court, under the circumstances, considers that such arrangement fully settles the dispute between the parties, for the parties may, amongst themselves, enter into any such arrangement as would make it quite unnecessary for the Court to proceed any further in the matter; but such is not the case before us; In the present case, the question of any arrangement between the parties does not seem to arise upon the evidence. In regard to the decision of the Sudder Court in *Nobinchunder Bose v. Radhabullub Ghosain S.D.A. (1856)* 248 cited before us, I have. only to observe that it was under a different law prior to the passing of Act XIV of 1859. In regard to the decision in *Brijo Coomar Mullick v. Ram Buksh Chatterjee 1 W.R. Mis. 1*, it appears to me, that the facts in that case are not similar to those before us now. There the judgment-debtor had not acquiesced in the arrangement made between the decree-holders, and the Court rightly held that the arrangement to which the judgment-debtor was no party could not give him a better position than he would otherwise have, and enable him to plead limitation against one or other of the decree-holders who may not have taken any proceeding in the matter, although it could have done when the judgment-debtor had given his acquiescence in the arrangement. The obiter dictum, there is no doubt, is in support of the view now contended for by the respondent before us, but with all the respect due to the learned Judges who decided that case, I am of opinion that the view now taken by us is in accordance with the later rulings of this Court.