(1868) 12 CAL CK 0016

Calcutta High Court

Case No: Special Appeal No. 1536 of 1868

Radha Gobinda Shaha		APPELLANT
	Vs	
Sheikh Tawku Jamadar		RESPONDENT

Date of Decision: Dec. 1, 1868

Final Decision: Dismissed

Judgement

L.S. Jackson, J.

In special appeal it is contended that the plaintiff was so entitled in respect of all the decrees, on one of which, it is alleged, that the attachment did take place; and inasmuch as the fact of " attachment in the four suits does not plainly appear, we are asked to remand the case to the lower Court, in order that an issue may be framed and tried on this point. It appears to me that this was a point which the plaintiff in his view of the case, was bound to take in regular appeal; for if, as he considers, he was entitled to the relief he asked for, on the ground that he had actually attached in all his four suits in the year 1864, and if he had been prejudiced by the omission of the Court of first instance to frame an issue, and so enable him to tender evidence on that point, it was his business distinctly to complain of that omission in the regular appeal, and if he failed to do so, the lower Appellate Court could not be expected to give relief upon a point not raised before it. But it seems to me that the question is not material, for it must be conceded that if the plaintiff did not actually attach in all four suits, he must have attached first in one of them, and the other three would have been subsequent attachments, no matter at how short an interval of time, and, as subsequent attachments, they would take rank with all other subsequent attachments. It cannot, I think, be said that a creditor, holding several decrees against the same judgment-debtor, can take out simultaneous attachments against that debtor"s property in such a manner as to entitle himself, u/s 270 of the Code of Criminal Procedure, to have all his decrees paid in full to the exclusion of other attaching-creditors. I understand the words of Section 270, viz., "the person on whose application such property was attached" to mean not the individual but the executing-creditor, looking upon him simply as the person interested in that particular suit.

2. Then it cannot be said that there is any efficacy in the decrees which the plaintiff obtained declaring him entitled to be paid in all the four suits out of the property attached and released, because the defendants before us were no parties to that decree.

3. It was contended that the four attachments, made in the year 1864 (if there were four attachments), were revived by the efficacy of the decrees which the plaintiff obtained against the claimants; but plaintiff"s own conduct in afterwards taking out a separate attachment in the first of those cases appears to militate against this view. Whether or not, however, I think as I have already said, that the plaintiff can only be regarded as first attaching-creditor, in respect of one of his decrees which he held; consequently, on this ground the Court below ought to have dismissed his suit.

4. The special appeal, therefore, in my opinion, must be dismissed with costs.

Mitter, J.

I concur with my learned colleague in dismissing this appeal.