
(1870) 01 CAL CK 0013

Calcutta High Court

Case No: Miscellaneous Regular Appeal, No. 421 of 1869

Gajendranarayan Roy

APPELLANT

Vs

Hemangini Dasi Mother
and Guardian of Purna
Chandra Mitter

RESPONDENT

Date of Decision: Jan. 8, 1870

Judgement

L.S. Jackson, J.

It is admitted that in this case, if we follow the ruling in the case of Ramkissen Das v. Hurku Singh 7 W.R. 329, the appeal of the decree-holder must fail, inasmuch as the object of the decree-holder in this case is to enforce, in a summary way, by proceeding in execution, a security bond entered into by a party who was not a party to the original suit, and entered into subsequent to the judgment. In such cases it is held by the learned Judges in the case referred to, that the provisions of section 204 do not apply; and it is admitted that there is no other provision of the Civil Procedure Code, under which such security bond can be summarily enforced. I myself consider there is no reason whatever for differing from the opinion expressed in that case as to the meaning of section 204. That is one of the sections referring to the steps which may be taken, and to the mode of commencing proceedings in execution immediately after judgment, and the words of the section are:--"Wherever a person has become liable as security for the performance of a decree or of any part thereof, the decree may be executed against such person." The effect of that clearly is to make such person one of the persons against whom the execution may be applied for, and taken out in like manner as against the defendant. The section appears to go no further, and not to contemplate obligations or engagements entered into subsequent to the judgment. I think, therefore, that, on this ground, and without entering into the other questions which are somewhat complicated in their nature, the appeal of the decree-holder ought to be dismissed with costs.

Markby, J.

I am of the same opinion upon the authority of the case referred to.