

(1880) 05 CAL CK 0012

Calcutta High Court

Case No: None

Ramessuri Dassee

APPELLANT

Vs

Doorgadass
Chatterjee

RESPONDENT

Date of Decision: May 25, 1880

Citation: (1881) ILR (Cal) 103

Hon'ble Judges: White, J; Maclean, J

Bench: Division Bench

Judgement

White, J.

The respondent in this case obtained a decree against the husband of the appellant on the 8th April 1878, and before application was made for execution the husband died. On the 29th March 1879, the respondent applied for execution of the decree upon a tabular statement. In the judgment-debtor column of this statement, the appellant's name is entered under the description of Ramessuri Dasi, widow of Ram Koomar, and in the column for the name of the person against whom execution is sought, the appellant's name is introduced as being that person. Upon this application the Munsif directed the property mentioned in the tabular statement to be attached and sold. The property was accordingly sold in June 1879, and bought by the respondent himself. Within a month of the sale the appellant applied to set it aside on the ground of irregularity.

2. One of the objections raised is, that the sale was not duly proclaimed at or near the spot where the attached property is situate.

3. We pronounce no opinion upon the validity of this objection, as it appears to us that there is a ground upon which the appellant ought to have succeeded in the Court below, and it is this, that the Court directed the attachment and sale of this property to proceed without having previously served a notice upon the appellant in accordance with Section 248 of the Cede. This section directs that the Court shall issue a notice to the representative of a deceased judgment-debtor before directing

the decree to be executed.

4. An excuse for the Court, so far as directing attachment to issue is concerned, may, no doubt, be found in the form of the tabular statement. Such a tabular statement ought not to have been put in unless the widow had actually been herself a party to the suit and had been sued as heir of her husband. It was calculated to mislead the Court. It is said by the appellant that it was put in with the intention of misleading the Court; but, whether that was the intention or not, it did not in fact mislead the Court. But, when the irregularity was brought to the attention of the Court, we think it ought at once to have allowed the objection of the appellant. Instead of that, the only notice which the Court takes of the objection in its judgment is this-"It is pointed out that no notice was served on the person against whom the execution was applied for as required by Section 248 of the Procedure Code, but this omission cannot vitiate the sale.

5. We think that the omission to give such notice affects the validity, or at all events the regularity, not only of the sale, but of the entire proceedings of the respondent in applying for execution; and that, quite irrespective of whether the irregularity was one u/s 311, the Court should have set the execution aside as soon as it became aware that no notice had issued.

6. No question arises in this case as to whether the interest of any third party would be affected by setting aside the execution proceedings, because the judgment-creditor is himself the purchaser, and he is the very party who has led the Court into the irregularity which had been committed.

7. It has been objected that there is no section in the Code which authorises the lower Court to set aside these proceedings; but we think it is not necessary to invoke a section of the Code for the purpose. Every Court has an inherent right to see that its process is not abused or does not irregularly issue, and may set aside all irregular proceedings as a matter of course, provided that the interests of a third person are not affected.

8. The order that we shall make, therefore, is one reversing the Munsif's order, and directing that the proceedings taken against the appellant in execution of this decree, including the sale, be set aside ab initio.

9. It may be necessary, unless the appellant admits assets and pays the amount of the decree, to take hereafter proceedings to execute it; but these proceedings must be commenced afresh. A tabular statement must be put in proper form, and a proper notice must be sent to the appellant, so that she may have an opportunity of paying the money or setting forth any defence she may be advised to make.