
(1869) 01 CAL CK 0010

Calcutta High Court

Case No: Miscellaneous Appeal No. 455 of 1868

Dhanpat Sing and
Another

APPELLANT

Vs

Lilanand Sing

RESPONDENT

Date of Decision: Jan. 9, 1869

Judgement

Glover, J.

This was a suit for execution of a decree. The first application the only one we have to deal with, is dated the 13th August 1864. The present application for execution was taken out on the 4th July 1867 so that if the first application for execution preferred August 1864 was sufficient to keep the decree alive, the decree-holder (applicant) is undoubtedly in time. The Judge affirming the order of the Principal Sudder Ameen, has considered the application of August 1864 not to have been a bond fide one, for two reasons; first, because the application was irregularly made through a mooktear; secondly of the Civil Court's decision was not filed with the application.

2. The second objection appears to us altogether untenable under the provisions of section 212 of Act VIII of 1859. That section nowhere makes it necessary that an application for execution of a decree should be accompanied by a copy of the decisions of the first Court, and principle has been repeatedly upheld in decision of The High Court, and notably in the case of Gunga Gobind Gupta v. Makhun hall Hattee (9 W.R. 362).

3. The other ground, namely that the application was made by a mooktear, and is therefore irregular, appears to us equally worthless; for whatever irregularity there might have been in that application, we think that the former Judge condoned it by afterward issuing notice on the judgment-debtor, and that the present Judge cannot now interfere to set aside the order of his predecessor. It has been urged upon us by the pleader for the special respondent that the Judge, after looking to the whole of the circumstances of the case, has decided upon the evidence before him, and that his decision is based on findings of facts with which no interference is possible in special appeal; but it appears to us that, as the Judge had no power to interfere with the order issuing notice on the

judgment-debtor, his decision is not reality one of fact at all, and cannot debar his court, in special appeal, from allowing the judgment-creditor to execute his decree.

4. We think that the application of the 13th August 1854 was sufficient to keep the decree alive, and that the present application being within three years from the application preferred on the 13th August 1864, is in time, and that the decree ought to be executed accordingly. The decision of the lower Appellate Court is therefore reversed, and the appeal decreed with costs.