
(1871) 05 CAL CK 0004

Calcutta High Court

Case No: Special Appeal No. 2438 of 1870

Ganesh Tewari and
Another

APPELLANT

Vs

Gajadhar Prasad and
Another

RESPONDENT

Date of Decision: May 3, 1871

Final Decision: Dismissed

Judgement

Glover, J.

A preliminary objection is taken to the hearing of this special appeal, and I think it must be allowed. The plaintiff, it appears, sued Shumram Lal and others for khas possession of land. The defendant admitted the plaintiff's right to get rent, but denied his right to manual possession. The plaintiff lost his case in the first Court, but gained it on appeal to the Subordinate Judge on the 28th of May 1870.

2. On the 30th of the month the rights and interests of the defendant in the property sold under this decree were sold at an auction sale and bought by Gajadhar Prasad, who at once preferred this special appeal.

3. I am of opinion that he cannot maintain it. I am very doubtful, in the first place, whether a right of making a special appeal is a thing that can be sold in execution, but if it be, the purchaser could not bring the appeal alone. He ought at the least to have joined the original defendant's name to his own, and have applied to the Court to have them so joined. There is no section in the CPC that provides for the purchaser of a right of appeal bringing that appeal in his own name. He seems, on the contrary, only to obtain a status by joining himself on to the party in the suit who had originally the right of appealing, and the Court would decide u/s 73 of the Code, whether such junction could properly take place. There ought to be some power of putting a stop to merely speculative litigation.

4. The case of Judooputtee Chatterjee v. Chunderkant Bhuttacharjee 9 W.R. 309, though not exactly in point with the present case, is analogous, and seems to lay down the

proper course of procedure.

5. I think that this special appeal should be rejected on the preliminary point taken by the special respondent's pleader, and with costs.

Mookerjee, J.

I am of the same opinion. The appellant is a purchaser of the rights of the defendant in an execution sale held after the decision of the lower Appellate Court I do not find any provision in Act VIII of 1859 authorizing or empowering a purchaser to prefer an appeal against a decision passed in the presence of the plaintiff and defendant without joining the defendant as co-appellant or co-respondent in the appeal. The appellant does not appear in the record as a party to the suit. I do not think that he has any right to prefer this appeal without joining the defendant as a party.