

Lallit Coomar Gangopadhya Vs Denonath Chuckerbutty

Court: Calcutta High Court

Date of Decision: Aug. 22, 1882

Citation: (1883) ILR (Cal) 633

Hon'ble Judges: Wilson, J; Field, J

Bench: Division Bench

Judgement

Wilson, J.

This is an appeal against an order allowing an application for execution of a decree. The decree bears date the 7th of June

1877, and was in favour of Koilash Nath Dutt Rai. On the 1st of June 1880 one Nobin Chunder Bhattacharjya applied for execution claiming it as

assignee of the decree. It is found as a fact that he was a mere benamidar for the original decree-holder. The present application, which is made by

a person who has attached the decree, was made on the 9th of December 1880. The question raised is, whether this application is barred by

limitation. If the period of limitation runs from the date of the decree there is no doubt that the application is too late. If the period runs from the

former application for execution there is no doubt that it is in time. We have, therefore, to say whether an application for execution by a mere

benamidar is an application "in accordance with law" within the meaning of Article 179, Clause 4 of Schedule II, of the Limitation Act. It has

already been held in Abdul Kureem v. Chukhun 5 C.L.R. 253 that where a decree is held in the name of benamidar the proper person to apply for

execution is the real decree-holder, and in that view we fully concur. It follows that an application by the benamidar is not an application in

accordance with law.

2. The appeal will, therefore, be allowed, and the order for execution set aside with costs in all Courts.