

(1936) 05 CAL CK 0020

Calcutta High Court

Case No: Appeal from Appellate Order No 505 of 1935

Subal Chandra Jana

APPELLANT

Vs

Surendra Nath Bera and Others

RESPONDENT

Date of Decision: May 13, 1936

Final Decision: Allowed

Judgement

R.C. Mitter, J.

The decree-holder is the Appellant before me. He got a decree in a suit instituted under sec. 48 D of the Bengal Tenancy Act. The decree determined the fair rent and directed that in the event of the Defendants not agreeing to pay the rent so determined by the end of Chaitra, 1340, E. S., they were to be ejected from the land which they held under the Plaintiff as tenants. This decree was put into execution by the Plaintiff decree-holder, whereupon the judgment-debtors filed an application under sec. 47 of the Civil Procedure Code, objecting to the execution. In the application for execution the decree-holder stated that the judgment-debtors had not agreed to pay the rent determined by the decree and had not paid the amount so decreed by the end of Chaitra, 1340, B. S. The judgment-debtors raised two objections in their petitions. First of all they stated that the decree was not a correct decree, in accordance with the provisions of sec. 48 D and, secondly, that they had agreed to accept the rent determined by the decree and had, in fact, tendered the amount to the decree-holder within the month of Chaitra, 1340, B. S. To follow the first point, the contention was raised in this form. They stated that the decree was not in accordance with the provisions of sec. 48 D as that section contemplates a preliminary order requiring the Defendants to state whether they agreed to pay the rent as settled by the Court and if in pursuance of the preliminary order they refused to come to Court and to signify their assent, then the Court has to pass a decree for ejectment. The first Court overruled the objections on the first point, and came to the conclusion that the decree, even if irregularly made, could not be attacked in execution. On the second point the said Court disbelieved the judgment-debtors' evidence of tender. The judgment-debtors preferred an appeal

to the District Judge, who did not enter into the question as to whether the judgment-debtors had, in fact, tendered the amount decreed to the decree-holder within the month of Chaitra, 1340, B. S. He only went into the first question, and came to the conclusion that the decree as made in the suit was not in accordance with the provisions of sec. 48 D and so could not be executed. Having taken this view of the matter, he dismissed the application for execution on that ground and on that ground alone. In my judgment the order made by the learned District Judge is wrong. The contention of the judgment-debtors, in substance, was that the decree was not drawn up in proper form, after a preliminary order. At the most it amounts to this that the final decree for ejectment was made in an irregular manner. There is no question that the Court which passed the decree had jurisdiction to entertain the suit.

2. Having regard to the decision of the Full Bench in the case of *Gorachand Haidar v. Prafulla Kumar Roy* ILR 53 Cal. 166; S.C. 29 C.W.N. 948 (F. B.) (1925), I hold that the executing Court could not go behind the decree in this case. As was pointed out in that case that the executing Court could only refuse to execute a decree in three circumstances only, that is to say, when the Court which had passed the decree had no territorial jurisdiction or jurisdiction over the person of the Defendant or over the subject-matter and it is only within these narrow limits that the executing Court could refuse to execute the decree. So far as the observations of the Full Bench with regard to territorial jurisdiction are concerned, there have been subsequent decisions which go to show that the Full Bench did not consider the effect of sec. 21 of the Civil Procedure Code, but it is not necessary to determine that point now. Here there is no question of want of jurisdiction of the Court which had passed the decree. In my judgment, having regard to the principle laid down that ordinarily an executing Court must execute the decree as it stands and cannot go behind the decree.. the learned District Judge was wrong in refusing execution of the decree. The only point on which the learned District Judge decided the appeal cannot be supported.

3. The learned District Judge did not enter into the question as to whether the judgment-debtors had made the tender of the money to the decree-holder within the month of Chaitra. 1340, B. S. On that point there was an adverse decision by the first Court against the judgment-debtors but the judgment-debtors are entitled to a finding on this point from the lower Appellate Court.

4. In the result the appeal is allowed, the order passed by the learned District Judge is set aside and the case remanded to that Court in order that the question of tender may be gone into on the evidence which is on the record. Costs to abide the final result: the hearing fee is assessed at one gold mohur.