

(1936) 05 CAL CK 0021

Calcutta High Court

Case No: Civil Rev. Case No. 1591 of 1935

Jagabandhu Roy

APPELLANT

Vs

Jagabandhu Saha Sardar and
Others

RESPONDENT

Date of Decision: May 5, 1936

Judgement

1. One Mazafor Ulla obtained a decree for money amounting to Rs. 1,661 against the Secretary of State for India in Council in the 2nd Court of the Sub-ordinate Judge of Sylhet on the 29th May, 1933. The Opposite Parties Nos. 1 and 2 got a decree against the said Mazafor Ulla for Rs. 2750 on the 23rd November, 1934, in the Court of the Additional Subordinate Judge of Sylhet. The Opposite Parties Nos. 3 to 18 also obtained a decree against Mazafor Ulla for Rs. 12930-8 on the 29th November, 1934, in the Court of the Additional Subordinate Judge of Sylhet. The Petitioner obtained a decree against the same person in the first Munsif's Court at Sylhet for Rs. 1893 on the 18th March, 1935. The Petitioner thereafter got his decree transferred to the Court of the 2nd Subordinate Judge, Sylhet and started execution and attached the decree of Mazafor Ulla against the Secretary of State for India in Council in Execution Case No. 73/35. Thereafter, the Petitioner was substituted in place of Mazafar Ulla. He applied for execution of the decree against the Secretary of State in Execution Case No. 103 of 1935 of the 2nd Court of the Subordinate Judge at Sylhet on the 27th May, 1935. The Opposite Parties Nos. 1, 2 and 3 to 18 in execution of their decrees against Mazafor Ulla also attached the decree of Mazafor Ulla against the Secretary of State for India in Council on the 12th July, 1935, and 31st July, 1935, respectively and were substituted as decree-holders in place of Mazafor Ulla. They prayed for realisation of decretal amount from the Secretary of State with an additional prayer that if the amount be realised in the meantime in the execution started by the Petitioner against the Secretary of State, the assets should be rateably distributed amongst all the decree-holders of Mazafor Ulla. On the 14th August, 1935, the Secretary of State for India in Council deposited a sum of Rs. 1791-II-9p. in Execution Case No. 103 of 1935 to the credit of Mazafor Ulla. On the 16th August,

1935, the Opposite Parties Nos. 1 and 2 and 3 to 18 applied by separate petition in their respective execution cases for attachment of money deposited by the Secretary of State for India in Council. The Petitioner thereupon raised an objection that the Opposite Parties Nos. 1 to 18 were not entitled to any rateable distribution of the money which was deposited in Court by the Secretary of State. The learned Subordinate Judge has overruled this objection and has passed an order for rateable distribution of the money amongst the Petitioner and Opposite Parties Nos. 1. and 2 and Opposite Parties Nos. 3 to 18. The Petitioner thereupon obtained this Rule. From the facts stated above it is clear that before the Secretary of State for India in Council deposited the amount in Court in the Execution Case started by the Petitioner, the Opposite Parties Nos. 1 to 18 had also attached the decree obtained by Mazafor Ulla and had applied for rateable distribution. The learned Advocate for the Petitioner however contends that the provisions of sec. 73, C. P. C. are not attracted to the facts of the present case, inasmuch as by virtue of the provisions of Or. 21 r. 53 (2), C. P. C. the money which was deposited by the Secretary of State for India in Council in the execution case started by the Petitioner can be applied only in satisfaction of the decree obtained by the Petitioner against Mazafor Ulla. We are unable to accept this contention. This rule contemplates cases where a decree for money is attached by a sole decree-holder. But if more than one decree-holder attach the same decree before the money due under the attached decree is deposited in Court by the judgment-debtor of the decree attached, i.e., before the assets are paid into Court, the provisions of sec. 73 of the Code are attracted and the assets after deduction of the costs of realisation are to be rateably distributed amongst the decree-holders. That is what the learned Subordinate Judge has done in this case. No ground has therefore been made out for our interference with his order.

2. The Rule is accordingly discharged with costs--hearing-fee being assessed at two gold mohurs.