

(1918) 01 CAL CK 0050**Calcutta High Court****Case No:** None

Rudra Narayan Jana

APPELLANT

Vs

Naba Kumar Das and Others

RESPONDENT

Date of Decision: Jan. 25, 1918**Citation:** 44 Ind. Cas. 156**Hon'ble Judges:** Teunon, J; Newbould, J**Bench:** Division Bench**Judgement**

Teunon, J.

In this appeal it appears that on a previous application to this Court by the judgment-debtor-appellant it was directed by an order, dated 19th December 1916, that on the decree holder furnishing security to the extent of Rs. 50,000 in Immovable property the decree-holder should be at liberty to proceed with execution.

2. The present appeal by the judgment-debtor is directed against an order accepting the proffered security and directing delivery of possession to the decree-holder of the property forming the subject-matter of the decree. A preliminary objection is taken that against this order no appeal lies and in support of this contention we have been referred to the cases reported as Saraswati Barmonya v. Moti Barmonya 20 Ind. Cas. 72 : 41 C. 160 : 17 C.W.N. 1240; Srinivas Prosad Singh v. Kesho Prosad Singh 12 Ind. Cas. 745 : 14 C.L.J. 489 and to the decision of this Court in Appeal from Order No. 5 of 1916. But these cases in fact show that though against the interlocutory orders or intermediate steps leading up to the final order an appeal may not lie, yet against the final order, in this case the order directing delivery of possession, an appeal will lie. For this proposition there is also authority in Luchmeeput Singh v. Sita Nath Doss 8 C. 477 : 10 C.L.R. 517 : 4 Ind. Dec (N.S.) 305.

3. The judgment-debtor took a number of objections to the sufficiency of the security and the learned Subordinate Judge has made the orders referred to above without making any inquiry into the said objections. He was of opinion that for the

purposes of the inquiry before him it was unnecessary to enter into "interminable questions of title" and other like matters

4. In this view he has clearly erred. Property in which the surety cannot show a *prima facie* title is obviously of no value for the purpose of securing the judgment-debtor and the value may again be seriously affected by questions of transferability.

5. The properties pledged have been described in 7 lots or parcels.

6. The last 2nd and 6th lots of the 1st report and the additional lands in the supplementary report have been valued on the footing that they are raiyati holdings at a fixed rate of rent. The judgment-debtor contended that they are ordinary occupancy holdings not transferable by local custom or usage.

7. If there are reasonable grounds for thinking that the rent is or may be liable to enhancement or that the landlord's consent to a transfer has to be obtained, the valuation will obviously have to be revised. Moreover, as regards the additional properties there appears to be a controversy as to the extent of the interest at least of the proposed sureties.

8. In the 4th and 5th lots there is a question regarding the extent of the surety's share. In the 4th lot the surety says he has a half share, while the judgment-debtor says that the surety has and can pledge only a 1/6th share, the question raised apparently being whether the property descended from the surety's father, grandfather or great grandfather. The 5th property stands in the name of the surety's wife who does not join in the transaction, and the question is whether the property is hers or belongs to the husband and wife in equal shares.

9. The 3rd item is described as debattar and the proposed surety is a co-sharer sebait. The surety says that the sebaits have mortgaged on previous occasions, but these transactions may represent merely breaches of trust and if the land in question is the absolute property of the thakur, obviously it cannot be accepted as a valid security for the personal debts of the sebait. It has been said that this debattar property has not been taken into account but that does not appear to be the case. Without this property the valuation does not exceed Rs. 49,000.

10. In respect of the 2nd item a further question arises. Of the six securities who are brothers two are minors. The eldest brother who is their guardian *ad litem* has been permitted to execute the security bond on their behalf. In granting this permission the Subordinate Judge appears to have overlooked the fact that default on the part of any of the major co-decree-holders will bring liability upon the properties of the minors and it will be for his consideration whether the 1/3rd share of the minors in properties not the subject-matter of the litigation should be accepted as a valid security.

11. For the foregoing reasons we set aside the orders complained of and direct that before accepting the security proffered the Subordinate Judge do make inquiry into the objections taken by the judgment-debtors.

12. The property of which possession has been given, it appears, to the decree-holder-respondents will now be restored to the possession of the judgment debtor-appellant. Costs of this hearing will be costs in the case. We assess the hearing fee at three gold mohurs.

13. The record will be sent down without delay.

Newbould, J.

14. I agree.