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Date: 23/10/2025

Gnanendra Kumar Rai Chowdhury Vs Sree Sree Shayama Sunder Jen and Others

None

Court: Calcutta High Court

Date of Decision: Jan. 28, 1918

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 13, Order 21 Rule 17(2)

Citation: 44 Ind. Cas. 553

Hon'ble Judges: Teunon, J; Newbould, J

Bench: Division Bench

Judgement

1. This appeal arises out of certain proceedings in execution. The decree in question being a rent-decree was obtained against certain persons as

shebaits of a certain Thakor on the 28th November 1911. The application for execution was made on the 23rd November 1914. On its face the

application was one in accordance with law. Later, on objection taken by the judgment-debtors it was discovered that against the properties

specified in the list furnished under Order XXI, Rule 13, proceedings could not be taken and accordingly on the 14th January 1915 the decree-

holder made an application to the Court requesting the Court to accept a further list of properties and praying that execution should proceed by

attachment and sale of those properties. It has been held by the first Appellate Court that the application haying been admitted and registered the

proposed amendment could not be accepted and that it would be necessary for the decree-holder to make a fresh application in execution.

Incoming to this conclusion the Court relied upon the decision of a Full Bench of this Court reported as Asgar Ali v. Troilokya Nath Ghose 17 C.

63 : 8 Ind. Dec. (N.S.) 960. We may observe, a further reference has been made to the case reported as Salimulla Bahadur v. Sainaddi Sarkar 22

Ind. Cas. 337 : 18 C.L.J. 538. But the present case may be distinguished from both these cases, in that in those two cases the application as

originally made was one not made in accordance with law and that it contained no list of properties against which the proceedings wore intended to

be taken. In the present case, as we have already pointed out, the matter is different. Here there was a list of properties, the application was one

made in accordance with and it was only on the objection taken by the judgment-debtors that it was discovered that against these properties

execution could not proceed. We are not of opinion that in a case such as. this the decree-holder should be confined to the properties he had

originally specified, and we think that it was open to him to ask the Court to proceed against the properties specified in his farther and

supplementary list. We are further of opinion that that list should be taken as part of the original application under the provisions of Order XXI,

Rule 17 (2),or if afresh application were at all necessary that that application should be treated as one made in continuation of the application first

presented on the 23rd November 1914.

2. In this view no question of limitation arises and we, therefore, set aside the order of the first Appellate Court and decree this appeal with costs.

The decree-holder will now be at liberty to proceed in execution as on his application of the date 23rd November 1914.

3. We assess the hearing fee at three gold mohurs.