
(1868) 06 CAL CK 0013

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 131 of 1868

R.E. Bell

APPELLANT

Vs

Gurudas Roy

RESPONDENT

Date of Decision: June 29, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

Looking at this case from beginning to end, I should scarcely have thought it possible that there could be such a case in existence. It appears that Gurudas Roy, the respondent in this appeal, purchased two Government revenue-paying estates from Brahmamayi Devi and Ramjaya Samadar. Upon seeking to obtain possession, the property was found to be in the possession of Mr. Bell, the appellant in this case, who claimed under a putnee-grant from the same vendors, upon which an Act IV of 1840 case was instituted, and it was ordered that Mr. Bell should be retained in possession. Thereupon Gurudas Roy instituted a civil suit to recover back his purchase-money, and also certain revenue which he had paid to Government in respect of the estates. Mr. Bell though he appears to have had nothing at all to do with the sale to Gurudas, or the receipt of the purchase-money from him, was made a co-defendant. No reason was given in the plaint for making Mr. Bell a party. The plaintiff did not even suggest that he had a right of action against him, but in his plaint simply prayed a refund from the Devi and the Samadar, defendants, of his purchase-money; and of the revenue which he had paid. No relief whatever was asked against Mr. Bell. The suit was originally tried before the Principal Sudder Ameen, and was dismissed. On appeal to the Additional Judge of Zillah Dacca, he ordered the decree to be reversed, and the appeal decreed with costs." Nothing further was said in the decree. There was no award that any body should recover any thing from any body else. What then was the effect of reversing the decree of dismissal of the suit, without decreeing any thing against any one? Especially, what was the effect of reversing the decree of dismissal as regards Mr. Bell, from whom no relief was sought? Did it amount to an affirmative decree that the plaintiff should recover from him the purchase-money and the Government revenue which he had paid?

2. In execution of the decreed the Additional Zillah Judge, Mr. Bell's property was seized and sold, upon which he petitioned the Principal Sudder Ameen, and contended that he was not liable under the decree, and that his property ought not to have been seized and sold under it. The Principal Sadder Ameen held, as it appears to me vary properly, that Mr. Bell was not liable to refund the purchase-Money or the Government revenue; but he added that Mr. Bell was so pay the costs of the suit, "inasmuch as he appeared by vakeel in an Appellate Court where the plaintiff, the decree-holder, was the successful suitor." I am at a loss to understand why a gentleman, who is held not liable for the debt, should be liable for the costs of the suit because he appeared by a vakeel. Mr. Bell appealed to the Judge upon the ground that he was not liable to the costs, but the Judge held that he was liable for the costs, and that his property was liable to be sold for them. We have not (sic) any thing to do with the question of costs, inasmuch as that decision of the Judge is the subject of a separate appeal, and is not now before us. Gurudas also appealed from the same decision of the Principal Sadder Ameen, upon the ground that the Principal Sudder Ameen had held, that Mr. Bell was not liable for the purchase-money, and Mr. Abercrombie, the Judge of Dacca, held that Mr. Bell was liable for the purchase-money, and that his property was liable to be sold in execution for it. He says, " Mr. Bell is not liable for the costs only according to the terms of the decree. He is jointly liable with any other defendant for the whole decree, and the Principal Sudder Ameen has no authority, in execution, to release Mr. Bell from any part of his liability." He reversed the decision of the Principal Sudder Ameen so far as it released Mr. Bell from liability for the purchase-money and the Government revenue paid by the plaintiff, and held that his property was liable to be sold in execution for it.

3. It appears to me that Mr. Bell was not liable under the decree. The decree was one merely reversing the dismissal of the suit, without awarding any sum of money or any thing against any body. It appears to me that the reversal of the decree of dismissal did not amount to a decree that Mr. Bell was liable for the amount which the plaintiff claimed in the suit. But the decree of the Judge not only reversed the decision of the Principal Sadder Ameen by which the suit was dismissed, but it went on and declared that the plaintiff's appeal was decreed. It is certainly very indefinite as to what liability Mr. Bell was supposed to have incurred under those words, " the appeal is decreed." I have already pointed out that no relief had been asked for against Mr. Bell, that he was not alleged to have had any thing to do with the sale of the property to the plaintiff or with the receipt of any portion of the purchase-money; although he was made a party to the suit, no relief whatever was asked against him. Now, in order to ascertain what was the effect of decreeing an appeal against the dismissal of the suit, it is necessary to look at the grounds of appeal. The grounds of appeal were very similar to the plaint so far as Mr. Bell was concerned, for they made no complaint against him. They stated that the vendors had executed a conveyance to the plaintiff and received from him the purchase-money; that they, the vendors, had granted a putnee to Mr. Bell, and that in a suit under Act IV of 1840 the plaintiff's conveyance had been rejected and Mr. Bell's putnee upheld, and that Mr. Bell had been ordered to be retained in possession. Under such circumstances, the

appellants alleged that the dismissal of the suit for a refund of the purchase-money and of the Government revenue was erroneous. That ground of appeal merely stated that the vendors had, after the sale to the plaintiff, granted a putnee, to Mr. Bell, of the property sold by them to the plaintiff. If that were the case, the plaintiff was entitled to recover the land from Mr. Bell, because the subsequent grant of the putnee would be void as against Gurudas, a prior purchaser. The decreeing of that ground of appeal surely did not make Mr. Bell liable to refund the purchase-money, and to have his property seized and sold in execution for it. The second ground of appeal was, that as the vendors had received the purchase-money from the plaintiff, and afterwards fraudulently granted a putnee to Mr. Bell, they could not be relieved from a refund of the purchase-money I am at a loss to conceive how an order, decreeing that ground of appeal, could be held to be tantamount to a decree against Mr. Bell, who was not one of the vendors, that he should refund the purchase-money. The third ground of appeal was that the putnee having been upheld in a suit under Act IV of 1840 the validity of the putnee granted to Mr. Bell was no longer open to investigation, in other words, that the decision of the Magistrate in a case under Act IV of 1840 was conclusive in a suit brought in a Court of Civil Judicature upon title. This ground of appeal was, like the rest, also decreed, probably through inadvertence; but a decree that the validity of Mr. Bell's putnee could not be investigated by the Civil Courts, in consequence of the decision of the Magistrate in an Act IV case, was by no means tantamount to a decree that Mr. Bell was liable to refund the purchase-money which had been paid by Gurudas to his vendors.

4. Judges, when they reverse a decree, should be careful to specify the relief which they consider the appellant entitled to. It is, by using such words as "decree reversed" and "appeal decreed," that when the decree of the Appellate Court comes to be executed, no one can say what it is that the Court intended to decree, or what relief they intended to give, or what liability the respondent has incurred under it. This Court has been occupied a considerable time in endeavoring to ascertain what the Judge meant to award against Mr. Bell, when he reversed the decree by which the suit was dismissed, and decreed the appeal. In order to ascertain what was meant by decreeing the appeal" it has been necessary for this Court to go back to the appeal which was decreed, and to look to the grounds of that appeal. Upon doing so, they find that these words imposed no responsibility upon Mr. Bell. All the anxiety, delay, and expense of a petition to the Principal Sudder Ameen against the sale of Mr. Bell's property in execution of that decree, and of, the appeal from the decision of the Principal Sudder Ameen in the execution-proceedings; might and would have been avoided, if the Judge, instead of using the general term "decree appealed," had specified in clear and intelligible language what he himself intended when he pronounced his judgment. If he had attempted to define what he meant, the question would necessarily have occurred to him : Am I to order Mr. Bell, who is in possession of an estate under a putnee granted to him, to refund the purchase-money which his grantors have received upon the sale of the estate to another person ?" The injustice of such a decision must necessarily have presented itself to his mind; and if he had then referred to the plaint and to the grounds of appeal, he

would have found that even the plaintiff himself had not asked for any relief against Mr. Bell. The decision of the Judge is reversed, and it is ordered and declared that Mr. Bell is not liable under the decree for the refund of the purchase-money or of the Government revenue, and consequently that his property was not liable to be attached or sold under it. The appellant will be entitled to the costs of this appeal and the costs of the appeal to the Lower Appellate Court in the matter of the execution.

¹[Sec. 256:-No sale of immoveable property shall become absolute until the sale has been confirmed by the Court. At any time within thirty days from the date of the sale, application may be made to the Court, to set aside this sale on the ground of any material irregularity, in publishing or conducting the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.]

Confirmation of sale.