

**(1869) 01 CAL CK 0019**

**Calcutta High Court**

**Case No:** Rule Nisi No. 17 of 1869

In Re: Durga Charan Sirkar

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Jan. 8, 1869

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### **Judgement**

Markby, J.

In this case the facts appear to be that one Thakur Das Roy received a decree, in the Sealdah Small Cause Court, on the 21st February 1866, for Rs. 160, against one Ishan Chandra Chatterjee. Being desirous to execute this decree against the immoveable property of the defendant, he applied to the Judge's Court of the 24-Pergunnahs, u/s 20 of Act XI of 1865, for this purpose. That Court actually attached certain immoveable property of the judgment-debtor within its jurisdiction on the 23rd March 1868, the sale followed in regular course, and the property was sold to one Durga Charan Sirkar, on the 30th May, for Rs. 306. On the 15th March 1867, or rather more than a year after the first judgment was received, one Durga Charan Ghosal received a judgment against Ishan Chandra Chatterjee in the Court of the Principal Sudder Ameen of the same Zilla, and in execution of this decree, by proceedings in the Court of the Principal Sudder Ameen, he attached the same property. This was on the 9th March 1868, that is to say, 14 days before the attachment of the property effected by Thakur Das Roy. In consequence of some claim to the property made in the Principal Sudder Ameen's Court, there was some delay in proceeding with the execution in that Court, and during this delay the property was sold under the execution in the Zilla Judge's Court.

2. On the 11th of July, Durga Charan Ghosal made an application to the Zilla Judge of 24-Pergunnahs to set aside the sale to Durga Charan Roy, on the ground of certain irregularities, and the inadequate price obtained for the property. The Zilla Judge considered that Durga Charan Ghosal's application was inadmissible on two grounds: first, inasmuch as he was not the judgment-debtor; and, secondly, as it was not made within 30 days after the sale took place.

3. When, however, the Zilla Judge was called upon by the purchaser to confirm the sale, he conceived that he was at liberty to consider whether or no the judgment and sale had been made sufficiently public, and, generally, whether the sale ought to be confirmed.

4. Ultimately, he refused to confirm the sale for two reasons: first, because the attachment and order of sale by his own Court were, in his opinion, not made sufficiently public; secondly, because the attachment in the Principal Sudder Ameen's Court having been prior to the attachment in his own Court, he thought that no legal sale could be made by his order, and by his order declared the sale to be void.

5. Durga Charan Sirkar, the purchaser, has now obtained a rule calling upon the decree-holder, Thakur Das Roy, to show cause why this order of the Zilla Judge should not be set aside.

6. Two objections to the order have been made by the pleader for the applicant in the argument upon this rule: first, that the Judge having found that the requirements of the Statute as to publication had been formally complied with was not at liberty to find that the publication had been insufficient; and, secondly, that the Judge was wrong in holding that the prior attachment in the Principal Sudder Ameen's Court prevented him from making an order for the sale of the property in his own Court. Were it necessary now to express an opinion upon these two points, I must say that I should have considerable difficulty in meeting these objections to the ruling of the Zilla Judge. But as there are undoubted difficulties in construing the sections of the Code upon which the questions turn, I do not wish to express any final opinion on the points raised. It is unnecessary to do so, because the Judge's decision, whether right or wrong, was upon a matter entirely within his jurisdiction, and upon which there is no appeal. I conceive, therefore, that this Court has no power whatever to interfere. There would be an end of the finality of all decisions if this Court, under some supposed general and undefined power\* other than by way of appeal, could entertain applications, the object of which was to question the propriety of decisions in the Courts below. When the Courts below exceed their jurisdiction, or refuse to exercise it, we can interfere; but we cannot do so on the sole ground that the decision has been erroneous on a point of law.

Bayley, J.

I concur in the order of Mr. Justice Markby.

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\* "Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its Appellate jurisdiction, &c."--24 and 25 Vic., C. 104, Sec. 15.