

(1869) 01 CAL CK 0021

Calcutta High Court

Case No: Motion Case No. 725 of 1868

In Re: Maharajah Dhiraj Mahtab
Chand Bahadur of Burdwan

APPELLANT

Vs

RESPONDENT

Date of Decision: Jan. 22, 1869

Judgement

Bayley, J.

This is an application to set aside an order of the Principal Sudder Ameen of Hooghly, by which the Maharajah of Burdwan, as a decree-holder, was prohibited from sharing in certain sale proceeds in Court in execution of a decree. The first ground for the application is that the Principal Sudder Ameen acted without jurisdiction, in ordering, on the application of a third party that certain sale proceeds which he had already directed to be rateably distributed among certain decree-holders, should be withheld from one of those decree-holders, viz., the Maharajah of Burdwan; and that in this view, the order of the Principal Sudder Ameen, being without jurisdiction, should be set aside.

2. The second ground is that the proceedings of the Principal Sudder Ameen are opposed to the provisions of Sections 270 and 271, Act VIII of 1859, and that, therefore, they ought to be set aside as illegal.

3. I am of opinion that the first ground, viz., that the Principal Sudder Ameen acted without jurisdiction is correct, and that, therefore, it is not necessary to go into the second point at all as a matter for judicial decision.

4. The Principal Sudder Ameen specified the decree-holders as being of the classes: the first class consisted of decree-holders of decrees Nos. 160 and 161, Anandmayi and another; the second class of other decree-holders who had attached the same property; and the third class consisted of the Maharajah of Burdwan and Hiralal Seal and another.

5. On the attachment of the property (lot Sherpore and another) by the decree-holders of the first class, viz., Anandmayi and others, certain parties, Debendra Nath and Rajendra Nath, came in as claimants, urging that the lands were dewattra and as such, could not be sold in execution of the decree. The objection was overruled on the ground that the petition was too late; and on the 12th July 1867, the sale of the property took place.

6. Subsequently, on the 17th August 1867, the Principal Sudder Ameen ordered that the decree-holders of the first class being parties who first attached the property, should be first satisfied out of the sale proceeds.

7. On the 20th November 1867, the Principal Sudder Ameen again directed that the second class of decree-holders who had also attached the properties, should be also satisfied out of the remaining surplus sale proceeds; and, accordingly on the 30th November 1867, an order was passed for a rateable distribution of the surplus-proceeds among the several decree-holders.

8. Thereupon Dabendra Nath and Rajendra Nath again repeated their claim to the land, on the ground that they were co-trustees of the land as dewattra (endowed land), and the Principal Sudder Ameen held that the decree of Hiralal Seal being one for recovery by contribution on account of payments of Government revenue for others, he was entitled to share rateably in the sale proceeds, but the Principal Sudder Ameen held that, as the Maharajah of Burdwan had only an ordinary money-decree, he could not be allowed to share in the same.

9. I think that the Principal Sudder Ameen had no jurisdiction to make this order; because, although a third party may claim before sale, both moveable and immoveable property, u/s 246, Act VIII of 1859, still Section 230 prohibits such party from claiming immoveable property after sale in execution.

10. I had some doubts as to whether, with reference to the frequent rulings by this Court that the sale-proceeds represent landed property sold in another shape, the claim might not be considered as against land, but I think it is clear that the land is changed into money by the process of sale; and that for the purpose of execution, the proceeds are to be treated as moveable property or money in its ordinary shape.

11. I also think that the Principal Sudder Ameen acted without jurisdiction, having once passed an order on the 20th November that the surplus proceeds be rateably distributed among the several decree-holders remaining to be satisfied, viz., Hiralal Seal and the Maharajah of Burdwan, and then having set aside and acted contrary to that order, on the mere motion of the third party, without first admitting a review of that previous order.

12. I am of opinion that, excepting in some special case of obvious and gross illegality, we cannot be called upon to exercise the extraordinary powers given us by Section 15 of the Charter Act, as if they were ordinary powers of appeal; but as this

question does not directly arise now that the case is decided on the point of jurisdiction, I need not go further into that question.

13. For the reasons stated above, I think that the order of the Principal Sudder Ameen should be set aside as passed without jurisdiction, and that the rule ought to be made absolute with costs.

Hobhouse, J.

14. The only facts which seem to me material in this case are these, viz., that on the 12th July 1867, certain properties of a certain judgment-debtor were sold, and that, thereafter, the surplus-proceeds of such sale were held in Court to be distributed among certain judgment-creditors. Certain of those creditors were satisfied in full; and by an order of the 20th November 1867, the Principal Sudder Ameen directed that the balance which remained should be distributed among the remaining creditors; and on the 30th November, made an order for a rateable distribution of the proceeds among those creditors, one of them being the Rajah of Burdwan, the petitioner before us, and the other Hiralal Seal and others, who have been called upon to shew cause against the rule.

15. Having passed the order of the 30th November 1867, which, I may remark, was an order strictly within the provisions of Section 271¹ of the Civil Procedure Code, the Principal Sudder Ameen, on the 13th March 1868, entertained and admitted the objections of certain persons not parties to the original suit, who set up a claim to the surplus-proceeds in question, on the ground that they were the proceeds of a dewattra mehal, of which they were co-trustees; and in its order the Court refused to allow the petitioner, the Maharajah, to participate in the surplus-proceeds, which, in its previous order, the Court had directed to be distributed to the said Rajah rateably.

16. The petitioner before us now prays that this order of the 13th March 1868 be set aside, as having been passed without jurisdiction. He also says that the order is manifestly illegal on the face of it; and that on this ground also, we should, under the provisions of Section 15 of the Charter Act, set aside the order.

17. I agree with Mr. Justice Bayley that the order was without jurisdiction, and it is not necessary, and I do not therefore go into the second point as regards the illegality of the order.

18. It seems to me that, in execution of a decree, the only parties that are before the Court, and over whom the Court has Jurisdiction, are primarily the judgment-creditor and the judgment-debtor; and that if any third party wishes to intervene and to have any rights of his decided in reference to the property disposed of as between the judgment-creditor and the judgment-debtor, he can only come in under certain specific provisions of law. One of these provisions is to be found in Section 246, and another in Section 230,² of the Code of Civil Procedure;

but it is not, and it cannot be for a moment contended that the third party in this instance was a party who claimed to be heard under either of those provisions, for the one applies strictly to property under attachment and before sale, and the other to immoveable property only.

19. It seems to me then that, when a claimant can only be allowed to come in under certain provisions of the law, a person who appears, on behalf of that claimant, must shew that he has a right to be heard; and in this case he has not been able to do so. The order of the Principal Sudder Ameen of the 30th November 1867, was strictly a legal order, and could only be disputed, if it could be disputed at all in review. When, therefore, the Principal Sudder Ameen virtually set aside the order on the claim of a third person who had no legal standing before him, he usurped a jurisdiction which the law does not give him. I think therefore that this rule ought to be made absolute with costs.

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<p>Surplus to be rateably distributed among decree-holders who have taken out execution prior to the order for distribution.</p> <p>Proviso where property is sold subject to a mortgage.</p>	<p>Sec. 271:--If, after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who, prior to the order for such distribution, may have taken out execution of decrees against the same defendant and not obtained satisfaction thereof. Provided that, when any property is sold subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale.</p>
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Procedure in certain cases if person dispossessed of immoveable property dispute the right of decree-holder to be put into possession of such property.

Sec. 230:--If any person other than the defendant shall be dispossessed of any land or other immoveable property in execution of a decree, and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree on the ground that the property was bond fide in his possession on his own account, or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the Court within one month from the date of such dispossession; and if, after examining the applicant, it shall appear to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff, and the decree-holder as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder.