
(1868) 06 CAL CK 0020

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 194 of 1868

Tarasundari Burmoni

APPELLANT

Vs

Behari Lal Roy

RESPONDENT

Date of Decision: June 24, 1868

Judgement

Phear, J.

The Principal Sudder Ameen is wrong. The execution which has been taken out by the Chatlangis has been, as by law it must be, execution of the whole decree; and as the result of the process issued for execution, Rs. 34,000 has been realized, there can be no doubt, that all the persons representing" the joint decree-holders, are entitled to share in that according to their interests. The order for execution on the application of a part only of the decree-holders, ought, in express terms, to have reserved the rights of the other decree-holders to share in the proceeds of execution. It was the fault of the Court that it did not do so, because the duty of reserving those rights is thrown upon the Court by Section 207 [q. v. supra, p. 28.] of Act VIII of 1859. The present appellants cannot be allowed to suffer in consequence of the omission of the Court in this respect, and they are entitled to have their share in the proceeds of execution, that is, in the Rs. 34,000. The case, therefore, must go back, in order that the Principal Sudder Ameen may apportion the amount realized in execution of the decree among all the decree-holders, including the appellants. The appellants must have their costs both of this and of the Lower Court.

¹Application for execution, how to made it.

[Sec. 207:--When any party in whose favour a decree has been made is desirous of enforcing the same, he shall apply to the Court whose duty it is to execute the decree, either in person or through his pleader in the suit or some other pleader duly appointed to act for him in that behalf. If there be two or more decree-holders, one or more of them may make application, if the Court shall see sufficient cause for allowing him of them to make such application; and the Court shall in such case pass such order as it may deem necessary for protecting the interests of the other decree-holders.]