

(1879) 05 CAL CK 0015

Calcutta High Court

Case No: None

Loki Mahto and
Others

APPELLANT

Vs

Aghoree Ajail Lall and
Others

RESPONDENT

Date of Decision: May 8, 1879

Citation: (1880) ILR (Cal) 144

Hon'ble Judges: Broughton, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

The first question that arises in this appeal is the nature of the order which the Appellate Court will make under Clause (w), Section 588 of the Code of Civil Procedure, by which an appeal from an order u/s 562 remanding a case, is allowed.

2. It is contended, that the only question which the Court has to consider is, whether the remand order is in form such as is provided for by Section 562, and that if it is formally correct, this Court is not, at the present stage, to enter into the merits of the adjudication on the preliminary point. But it appears to us, that there is no such limitation in the Code, and that the intention of the Legislature was, that when the order remanding a case is brought in review before this Court, the Court shall consider the propriety of that order in all respects, and if it is found that the order is defective, the party who had the benefit of a decree in the first Court shall retain that benefit. By Section 629 of the Code it is provided, in cases of an order for the admission of review of judgment, that the order may be objected to on appeal, on certain limited grounds,--namely, that it was in contravention of the provisions of Sections 624 and 626 or was made after the expiration of the period of limitation prescribed therefor and without sufficient cause, but not on any other ground. The fact, that there is no such restriction in respect of the power of reviving the remand order of an Appellate Court, seems to show, that it was not intended that the Court

should limit itself to consider merely the form of the order. It is also authorized to examine it on its merits.

3. With reference to the merits of the case, the question merely comes to this, whether a person who has purchased the rights and interests of one judgment-debtor, can be allowed to set up that the decree and sale under which he acquires title, extended to the interests of others besides the judgment-debtor named.

4. There are several cases decided by the Judicial Committee, which lay down a strict rule, limiting the effect of sales, where it does not appear on the face of the proceedings, that the judgment-debtor had been sued in a representative capacity; and it is only in cases where it is manifest that the judgment-debtor must have been sued as a representative, that the Court has allowed a sale, in terms of the interests of the judgment-debtor, to convey the interests of other persons. The cases referred to are: *Nugender Chunder Ghose v. Section M. Kaminee Dossee* (11 I.A., 241), *Baijun Doobey v. Brij Bhookun Lall Awusti* (L.R. 2 IA 275), *Deen Dyal Lal v. Jugdeep Narain Singh* (L.R., 4 IA 247; S.C. I.L.R., 3 Cal 198).

5. The case of *Muddun Thakoor v. Kantoo Lall* (L.R., 1 Ind. App., 333) is governed by a distinct principle. Although the debtors in that case were not necessarily sued in a representative capacity, the sons, who were contesting the sale made under the decree, were legally bound to pay the debt covered by the decree, and the property which had been sold would have been liable in their hands to be seized and sold for it.

6. The case of *Suraj Bunsu Koer* (See post, p. 148), decided by the Judicial Committee of the Privy Council on the 1st of February of the present year, only differs from this, because it was established that the debt was one for which the sons were not properly liable, and the purchaser had taken with notice of their repudiation of it.

7. In the present instance, the rights and interests of the fourth defendant only were sold, and there is nothing on the face of the decree to show that the other brothers were equally liable with him for the debt, or that the proceedings were taken against him in a representative capacity. Therefore, on the authority of the cases first referred to above, we must hold that the property of the defendant No. 4 only passed by the sale, and that the Munsif was right in holding that, under these circumstances, it was not open to the defendant, who was the purchaser at that sale, to go into evidence to show that the debt was one for which a decree might have been obtained against the other brothers. Possibly it might have been so obtained, but if the judgment-creditor was content to take a decree against one brother, in such a form that it did not bind the estate, the purchaser at the sale under the decree has no right to ask for more than what was attached and sold.

8. We, therefore, reverse the remand order made by the lower Appellate Court, and restore and affirm the judgment of the first Court with costs.