
(1881) 01 CAL CK 0019

Calcutta High Court

Case No: None

Baba Mohamed

APPELLANT

Vs

Webb

RESPONDENT

Date of Decision: Jan. 19, 1881

Citation: (1881) ILR (Cal) 786

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

The question before us relates to an alleged adjustment of a decree, which was obtained on the 18th March 1876, and affirmed on appeal on the 16th August of the same year.

2. The decree-holder was declared by the decree entitled to partition of a specified share, and to be put in possession of the same. He took out execution in September 1879 (whereby this case comes under the provisions of Act X of 1877 as originally framed), and he was put in possession under the decree on the 30th November 1879. Thereupon the judgment-debtor objected, that, in January 1877, the decree-holder had obtained satisfaction of the decree, and that this was evidence by a lease of the land covered by the partition-decree, which the decree-holder had given to him on that date.

3. The first Court declined to take this lease into consideration, or to interfere with the possession that had been given to the decree-holder.

4. The Judge on appeal decided that, whether Section 288 of the CPC applied or not, this was a matter which the Munsif should have enquired into u/s 244; and he accordingly remanded the case to him to do this. It is against this order that the present appeal is preferred.

5. It seems to us that the Munsif was right in refusing to consider the matter of the lease in connection with the execution of the decree. If the decree had been adjusted in the manner alleged by the respondent, then, u/s 258, such adjustment ought to have been certified to the Court. Not having been so certified, it cannot now be recognized by the Court charged with the execution of the decree. It is urged on behalf of the judgment: debtor that Section 258 has reference only to money-decrees, and that this is apparent from its position in chap, xix of the Code in connection with the particular sections relating to money-decrees alone. But a consideration of the terms of the section leads us to a different conclusion. That section corresponds in all material respects, and carries with it the same meaning as Section 206* of the former Procedure Code (Act VIII of 1859), which manifestly deals with the adjustment of any decree. Again we cannot agree with the Judge that the case can be decided under the provisions of Section 244, whether Section 258 is applicable or not, for this would enable a Court in execution to deal with any question relating to the execution of a decree u/s 244, although the particular question then before it might be specially provided for by another section of the Code.

6. We, therefore, reverse the decision of the lower Appellate Court, and restore that of the first Court with costs.