
(1870) 04 CAL CK 0013

Calcutta High Court

Case No: None

Thama Sing

APPELLANT

Vs

Kalidas Roy

RESPONDENT

Date of Decision: April 7, 1870

Judgement

Phear, J.

The judgment-creditor admits that his debtor is only entitled, as member of a partnership, to a share in the salt seized. It is contended that there is no express provision in Act VIII of 1859 which directs any particular mode of attachment to be followed in attaching an undivided share of moveable property. In England, the Sheriff can only seize the entirety of a chattel; therefore, no doubt, when a partnership share is seized and sold in execution in England, the Sheriff takes manual possession of the chattel to the exclusion of the partners. But as I understand the procedure in this country, the like difficulty does not here arise. Act VIII of 1859 provides two modes of seizure. The one is that of actual manual possession by the officer of the Court; the other is by way of formal notice, or injunction forbidding alienation. The first applies only, as I understand Act VIII, to the case where the judgment-debtor is of his own right in actual possession of a chattel or moveable property, or where some third person is in possession of it on his behalf, under such circumstances that the judgment-debtor could claim sole immediate possession of it. In my judgment, attachment by manual seizure does not apply to a case like the present. Section 233 of Act VIII of 1859 provides that, "when the property shall consist of goods, chattels, or other moveable property in the possession of the defendant, the attachment shall be made by actual seizure, and the Nazir or other officer shall keep the same in his custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof." Probably this section would cover the case where a third person held possession solely under the control and for the benefit of the judgment-debtor; but it seems to be clear that section 234 intends the attachment to be by written order, whenever some other person than the judgment-debtor has the right to exclusive and immediate possession. The words are:--"Where the property shall consist of goods, chattels, or other moveable property to which the defendant is entitled, subject to a lien or

right of some other person to the immediate possession thereof, the attachment shall be made by a written order, prohibiting the person in possession from giving over the property to the defendant." Here not only is the property not as a matter of fact in the possession of the judgment-debtor, but it is in actual possession of another person who has as great a right by the admission of the judgment-creditor to immediate possession as the judgment-debtor has. I think our law of procedure does not go to the extent of authorizing the judgment-creditor to take property out of the possession of a person entitled to immediate possession, not being the judgment-debtor. I must alter the form of the attachment, but it must date as of the original date. I have now expressed my opinion only; for I shall abstain from giving my decision till the point is referred to be decided by a Full Bench.