
(1873) 04 CAL CK 0013

Calcutta High Court

Case No: None

Kallypersaud Sing

APPELLANT

Vs

Hoolas Chund

RESPONDENT

Date of Decision: April 29, 1873

Judgement

Sir Richard Couch, Kt., C.J.

The first question put to as by the learned Judge of the Small Cause Court is "whether I am right in considering that the tiled huts claimed are not goods and chattels." He does not say "within the meaning of s. 58 of Act, IX of 1850," but that is what he must have intended and the question which we should answer. What is meant by goods and chattels by s. 58 appears from the subsequent sections. It is one of a series of sections relating to the execution of an order of the Court, and we find it said in s. 69 that "every bailiff executing any process of execution issuing out of the said Court against the goods of any person may, by virtue thereof, seize and take any of the goods of such person except, &c." The word "chattels" does not occur there. I think this shows that, in s. 58, chattels was used as synonymous with goods, and not as having a more extensive meaning. Then in s. 73, the previous sections containing provisions in regard to the sale of the property taken in execution, it is said:-- "Until such sale the goods shall be deposited by the bailiff by whom they were taken in some fit place, or they may remain in the custody of a fit person approved by the Judges to be put in possession by the bailiff." That is a provision consistent with goods and moveables being taken in execution, but not with a hut or house being taken. Then s. 80 provides for what is called the goods and chattels of the party being discharged and set at liberty which, I take it, means being restored to the owner, or freed from the execution. All these provisions seem to show that what was intended to be taken in execution of the order of the Small Cause Court were goods and chattels, or what are moveables, and not what in English law are known as chattels real. This construction of s. 58 is supported by the opinion of all the Judges in the case of Nattu Miah v. Nand Rani 8 B.L.R., 508. The ground upon which Macpherson, J., put his judgment shows that the huts are not goods and chattels, equally with the opinion of myself and the two Judges who concurred with me. Macpherson J., said he considered

that a hut was a house, and certainly a house cannot be properly described as goods and chattels. I think, therefore, that what have been described in this case by the Judge of the Small Cause Court are not goods and chattels that might be taken in execution under s. 58.

2. The second question submitted to us is whether, if they are not goods and chattels, the learned Judge was right in dismissing the plaintiff's claim under s. 88.

3. Now s. 88 provides that, "if a claim is made to or in respect of any goods or chattels taken in execution under the process of any Court, &c." If these are not goods and chattels taken in "execution under the process of the Court, they do not come within the words of that section. What it was intended for is that, when the bailiff had, in execution of the order of the Small Cause Court, seized property which, if it were the property of the defendant in the suit, might be taken in execution, and another person had put in a claim to it, the claim should be summarily dealt with by the Small Cause Court. But here the bailiff has taken in execution that which even if it were the property of the debtor, he would not be at liberty to take, and though it may seem hard that the claimant should be obliged to resort to a suit in order to establish his right, and to prevent his property being sold, that is the proper remedy. The bailiff, by seizing what the warrant of the Small Cause Court could not authorize him to seize, has been guilty of an illegal act, a trespass for which he is liable to be sued, and for which he may have to pay such damages as the owner of the huts may have suffered in consequence. Seeing what is stated in the case by the Judge of the Small Cause Court, he will probably not suffer any serious injury. An order will be made which will set matters right. I think we must answer both the questions, which have been put to us, as the learned Judge has decided, that huts are not goods and chattels within the meaning of the Act, and that the Judge was right in dismissing the claim.