

(1880) 06 CAL CK 0027

Calcutta High Court

Case No: None

Mullick Ahmed
Zumma, alias Tetur

APPELLANT

Vs

Mahomed Syed

RESPONDENT

Date of Decision: June 9, 1880

Citation: (1881) ILR (Cal) 194

Hon'ble Judges: Pontifex, J; McDonell, J

Bench: Division Bench

Judgement

Pontifex, J.

In this case there seems to have been a decree for possession with costs against three defendants. Inasmuch as possession was claimed by only one of the defendants that defendant alone appealed and was successful before the Judge. But the plaintiff appealed to this Court, and obtained a decree restoring the decision of the first Court. The Judge in the Court below has relied on the case of Hur Proshad Roy v. Enayet Hossein (2 C.L.R. 471), in which it was held that an appeal by one defendant did not prevent time from running for the purpose of executing the decree against the non-appealing defendants.

2. The reason why in that case it was held that limitation would apply, was because the appeal there was on the part only of a ten-pie shareholder of the property, leaving the decree capable of execution against the remainder of the property, which could not be affected by the result of that appeal. But in the present case the appeal of the one defendant related to the whole case of the plaintiff, and he was successful in setting the suit dismissed by the lower Appellate Court, which would have deprived the plaintiff of his right to any costs at all. In special appeal the plaintiff succeeded in getting the Judge's decree reversed; and therefore the original decree for costs was restored.

3. We overrule the orders of the Court below, and declare the plaintiff entitled to proceed with the execution of his decree for costs against the respondent.

4. The appeal is allowed with costs.