
(1870) 02 CAL CK 0036

Calcutta High Court

Case No: Reference No. 326

Ram Mohan Das

APPELLANT

Vs

Lakhi Narayan Roy

RESPONDENT

Date of Decision: Feb. 9, 1870

Judgement

Jackson, J.

This is a case referred by the Judge of Zilla Beerbhoom, upon a regular appeal before his Court, in a suit for 408 rupees, described as money due under a kistbandi. The circumstances are these. Jugal Kishor Das brought a suit against Lakhi Narayan Roy, who had been his gomasta, for accounts and money due from him as gomasta, in the -Revenue Court. Before judgment in that case, the defendant presented a petition of compromise, in which it was recited, that the whole amount due from the defendant to the plaintiff, including the amounts of two bonds previously executed by him, and in consideration of his employment, was rupees 325, which sum, it had been agreed, should be paid in four instalments. It was further agreed that, in default of paying any one of these instalments, the whole debt should be realized at once, with interest thereupon at 1/2 per cent per mensem, and it was prayed that the case should be disposed of in accordance with those conditions. Accordingly, the Revenue Court gave a decree in these words: Let the case be disposed of in accordance with the terms of the compromise," and nothing more.

2. After that Jugal Kishor assigned his interest in this decree to the present plaintiff, Ram Mohan Das, and the assignee applied for execution of the decree to the Revenue Court; but that Court refused execution, on the ground that, under a Circular Order of the Commissioner of Revenue, the Revenue Courts were incompetent to execute a decree by way of instalments.

3. Ram Mohan Das now sues the original defendant and judgment- debtor, Lakhi Narayan Roy, making Jugal Kishor pro forma defendant, to recover the amount due under that compromise.

4. The Judge is of opinion that the suit will not lie; and we are referred to the case of *Aghore Chunder Mookerjee v. Wooma Soonderee Debea* 7 W.R. 216. In that case, the learned Chief Justice observed: As a general rule, a suit cannot be brought in the Civil Courts to enforce a decree of the "Revenue Courts, under Act X of 1859. These decrees can be "enforced only by execution, and the limitation for proceedings to execute decrees of that nature is defined by Act X itself."

5. The Chief Justice proceeds to say: Then the question arises, whether there was a new contract in this case which the plaintiff can " enforce by suit in the Civil Court? If the contract of the defendant had been simply that, in consideration of the plaintiff withdrawing the attachment, he, the defendant, would pay down a certain portion of the decree, and pay the remainder of the decree by two instalments, the plaintiff " would have been at liberty, on default of payment, according to the " terms of the contract, to have sued in the Civil Courts for the enforcement of that contract; and if the amount had been within the limits of the jurisdiction of the Small Cause Court, he might have sued in that " Court. But, in this case, the contract specifically points out the mode "in which the instalments, which the defendant agreed to pay, were to be enforced in the event of his not paying them. The contract says if the instalments are not paid, then you, in execution of that decree will recover the whole amount of the instalments with interest, by executing the decree. So that, by the terms of the contract, by which the "defendant agreed to pay the instalment, the remedy was pointed out for the enforcement of the contract in the event of the defendant's making default. That remedy was the execution of the decree, and not a suit in the Civil Court."

6. Now the vakeel, who appears before us to-day for the plaintiff, points out as a distinction between that case and the case now before us, that there the parties specifically agreed that the remedy was to lie in execution of the decree, but here there is no such specific agreement, and that, consequently, there is a new contract in this case which the plaintiff could enforce by suit in the Civil Courts.

7. In the first place, the Judge has referred to us a point of law upon certain facts which he states. He finds that the terms of the contract are virtually to the effect that if the instalments are not paid, then the plaintiff, in execution of decree awarded on the contract, will be enabled to recover the whole amount of the instalments with interest, by executing the decree.

8. It has been contended that we are not bound by the Judge's construction of this contract or compromise, but we may put our own construction upon it. I am not quite sure that this is so; but if it be so, I think that so far as the proceedings go, there is good reason for saying that the Judge's construction is right. In the first place, this was not a compromise, or agreement, entered into after decree. It was a compromise entered into before judgment, and, apparently, it was intended that the compromise should be embodied in the judgment. Not only that, but we find that the party who took the plaintiff's interest in the decree by assignment (and this is what he took and what enables him to

maintain the suit) immediately afterwards proceeded to carry it out by execution of the decree; and it was only upon the Deputy Collector to whom he applied for execution, refusing, as I think upon mistaken grounds, to allow such execution, that he has come into Court with a fresh suit to recover the amount unpaid.

9. I think that the Deputy Collector was mistaken in refusing execution, because this was not an application to execute a decree by way of instalments. If the decree meant anything, it was a decree for the whole amount admitted to be due, with this restriction, that execution for that whole amount should not take place, unless and until the defendants committed default in paying some one of the instalments by which it was agreed that payment might be made; but if and when the defendant committed such default, then the plaintiff was to be at liberty to apply to the Court to execute his decree.

10. I by no means dissent from the ruling of the learned Chief Justice and Mr. Justice Kemp in the case of *Aghore Chunder Mookerjee v. Wooma Soonderee Debea* 7 W.R. 216; but, in the first place, I think, there is a distinction between the cases in which the new contract has been made before and after the decree, and, also, I think, that in order to give the plaintiff, or his assignee, a new cause of action upon such a contract, it ought to appear that the effect of that contract had been to close the proceedings under the original claim, for it seems quite clear, that the plaintiff could not have the two causes of action co-existing, and proceed upon one or upon the other at the same time.

11. I think, therefore, that the intention of the parties in this case clearly was to have a decree which might be executed in the manner stated, and that the remedy which the plaintiff had, lay in execution of that decree in the mode pointed out by Act X of 1859, and not in a new suit. If the plaintiff before us (who is not I think by any means entitled to our favourable consideration, as a party who has trafficked in the litigation of others,) made a mistake, and acquiesced in the order of the Deputy Collector, instead of appealing against that order, and getting it set aside, and brought a separate suit, such a suit not being open to him, I think he has only himself to blame. I think, therefore, that the opinion of the Judge in this case is correct, and that the plaintiff's suit ought to be dismissed.

Glover, J.

I am of the same opinion. It appears to me quite clear that the intention of the parties was that the money should be recovered on the arrangement which formed the basis of the Act X decree. That being the intention of the parties, the plaintiff, who is now the purchaser of the rights of the person who got that decree, cannot proceed in a fresh suit.