

(1878) 01 CAL CK 0019

Calcutta High Court

Case No: None

Shib Narain Shaha
and Another

APPELLANT

Vs

Bipin Behary Biswas
and Another

RESPONDENT

Date of Decision: Jan. 10, 1878

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

Bench: Division Bench

Judgement

Kemp, J.

The pleader for the special appellant refers to Bagram v. Wise 1 B.L.R. F.B. 91 and contends that the finding of the Judge is wrong. In that case the late learned Chief Justice, Sir Barnes Peacock, who delivered the judgment of the Full Bench, remarked, that "as soon as a copy of the decree, which is sent for execution to another Court, is filed in the Court to which it is transmitted, it has the same effect as a decree of that Court," and "that Court," that is to say, the Court to which the decree is transmitted, "is to proceed to execute it according to its own rules in the like cases."

2. No doubt the Munsif of Julpigori had authority and was competent to execute a decree of the Munsif of Rungpore that was transmitted to him, provided he had jurisdiction; but this is a case which, in our opinion, is not covered by the decision of the Full Bench quoted above. This was an application to the Munsif of Julpigori not to execute the original decree passed by the Munsif of Rungpore, but to take proceedings in execution upon his copy-decree and order, as provided in Sections 285 and 286 of the Civil Procedure Code, within the jurisdiction of another Munsif, viz., that of Azimgunge. Clearly it was beyond the scope of the instructions conveyed to the Munsif of Julpigori, and outside his jurisdiction, to grant a certificate for this purpose. Moreover, as the execution case had been already struck off his file by him, the appellant before us ought, u/s 290, to have applied to the Sudder Munsif of

Rungpore, who passed the original decree of the 31st December, 1862, for the issue of a fresh certificate.

3. We, therefore, dismiss this appeal, but without costs, as no one appears for the respondent.