

(1868) 11 CAL CK 0012

Calcutta High Court

Case No: None

Rajchandra Bose

APPELLANT

Vs

Dharmachandra Bose

RESPONDENT

Date of Decision: Nov. 28, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

We think that the opinion expressed by the Small Cause Court Judge is correct. We think that huts are not moveable property within the meaning of Section 19 of the Small cause Court Act, and consequently that they cannot be seized in execution. The word "moveable" in that section is used in contra distinction to the word "immoveable" in section 20. The word used is "moveable" not "removable," and that word does not, in our opinion, comprehend anything which the judgment-debtor has a right to remove. It means property which is capable of being moved in its existing state. A man has a right to remove a house which is built upon his own land, but it could not be contended that a pukka house built by a man upon his own land is moveable property, because he had a right to remove it, and that the land itself is immoveable. If a house built upon a man's own land is not moveable property, a house built upon a land which is rented from another does not seem to fall within the word "moveable." If such a house is not moveable property, there seems to be no reason why a mud house should be held to be moveable property; and the same reasoning appears to be applicable to a hut. In any one of these cases, a right to remove may exist, and the materials of which the erection is composed are capable of being removed, although the removal in one case would be attended with greater degree of labour than in the other. But the question as to whether the property is moveable or not, cannot depend upon the amount of labour which is required to remove it. The words "personal property" in Section 6 seem to be used in the sense of moveable property; for as regards Hindus and Mohammedans, there is no distinction between real and personal property, the distinction being between moveable and immoveable. That the word "personal" is used in Section 6 as referring to moveable property, is borne out to some extent by Section 19, which

gives power to issue execution against the moveable property of the debtor; and in the subsequent part of it uses the word "personal" apparently in the sense of moveable. The words are "if the warrant be directed against the moveable property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, and which shall be indicated by the judgment-creditor." There is no more reason why the Small Cause Court should have power to seize in execution a hut erected upon a small piece of land than it should have to seize the land itself.