

(1929) 03 CAL CK 0051**Calcutta High Court****Case No:** None

Ashutosh Nandi and Another

APPELLANT

Vs

Kundal Kamini Dasi and Others

RESPONDENT

Date of Decision: March 15, 1929**Citation:** AIR 1929 Cal 814**Hon'ble Judges:** Panton, J; B.B. Ghose, J**Bench:** Full Bench**Judgement**

B.B. Ghose, J.

This is an appeal by a purchaser of a holding in execution of a rent decree. It appears that there was a litigation between respondents 1 and 2, and respondents 3 and 4 as to the title to the property in question. When they were litigating with regard to the property, the landlord, respondent 3, brought a suit for rent and obtained a decree against respondent 4 who was said to be his recorded tenant. In execution of that decree, the holding was sold and purchased by the appellant. The title suit between the respondents was decreed in favour of respondent 2 and dismissed as regards respondent 1 in the trial Court. There were two appeals against that decree and ultimately the title to the property was found in favour of both respondents 1 and 2. The proceeding out of which this appeal arises was instituted by respondents 1 and 2 u/s 144, Civil P.C. for recovery of possession of the property which was purchased by the appellant in execution of the rent decree.

2. It was said that the result of the litigation between respondents 1 and 2 on the one hand and respondents 3 and 4 on the other was that the rent decree obtained by respondent 3 against respondent 4 was reversed and, therefore, the applicants were entitled to restitution by way of recovery of possession from the auction-purchaser at the rent sale by the present proceedings. The trial Court held that Section 144 applied to the case and this opinion was affirmed by the learned District Judge on appeal by the auction-purchaser. Against that order the auction-purchaser who was the opposite party in the trial Court has preferred this

appeal. His contention is that it is not a matter which falls within the provisions of Section 144 of the Code, that this section only applies where the decree of a Court of first instance is varied or reversed on appeal and it does not apply to a case where, as the result of a different suit, the title of a person derived by purchase under quite a different proceeding in execution of a decree which stands unreversed is questioned. In my opinion this contention is sound and must be accepted, A decree can only be said to be varied or reversed by an appeal, review or revision.

3. It may be possible that the result of a subsequent suit may affect the right of a person under a decree obtained in a previous suit but it seems to me that it would be straining the meaning of words to say that the previous decree is reversed or varied by the subsequent decree. Apart from authorities, which I shall presently discuss, it seems to me that the provision that the Court which is to make a restitution is the Court of first instance implies a Court the decree of which is reversed by a Court of appeal. Take for instance this case, where the decree for rent might have been passed by one Court, and confirmed on appeal in execution of which the appellant purchased the property. The suit for title between the respondents might have been tried by another Court which ultimately succeeded on appeal. Which Court of first instance is to make restitution ? The legislature would not have left the matter unprovided for if it was contemplated that a decree might be reversed by a separate suit. Reference may be made to Section 583 of the Code of 1882 which has been replaced by Section 144 of the present Code, if there is any doubt about the matter. That section provided that any party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal was to apply to the Court which passed the decree against which the appeal was preferred.

4. In my opinion reference to an appeal was omitted in Section 144 because it was not necessary having regard to the expression " Court of first instance " the decree of which is varied or reversed. The learned advocate for the respondent, however, relies upon the case of Subbarayudu v. Seshasani [1917] 40 Mad. 299, in support of his contention that Section 144 applies to cases where a decree may be held to have been reversed otherwise than in first or second appeal. There the learned Judges came to their conclusion " not without some hesitation." They referred to the case of Shama Purshad v. Hurro Purshad [1863] 10 M.I.A. 203, (at pp. 211 and 212) as supporting their view. In that case their Lordships laid down the general principle of law about which there can be no question. The facts, however might probably be considered as lending support to the view of the Madras Court. But that case has been explained by the Privy Council in the case of Naganna Naidu v. Venkatapayya Ravi AIR 1923 P.C. 167 (at pp. 305 to 307 of 50 I. A). Referring to Shama Purshad's case [1863] 10 M.I.A. 203, their Lordships say:

In that case the Judicial Committee in applying the test already quoted, namely, " whether the decree or judgment under which the money was originally recovered had been reversed or superseded," were of opinion that it was plainly intended by

the order in Council in that case that all the rights and liabilities of the parties should be dealt with under it, and it would be in contravention of the order to permit the decrees obtained pending the appeal on which it was made to interfere with this purpose, It was pointed out....that such decrees were mere subordinate and dependent decrees, which could no longer be held to have remained in force when the decree on which they were dependent had been reversed.

5. Their Lordships further said that they preferred the reasonings and conclusions set forth in the dissentient judgment of Garth, C.J., in the case of *Jogesh Chunder v. Kali Churn* [1877] 3 Cal 30. The learned Chief Justice said:

I have searched in vain to find any other instance in which the decree of an appellate Court in one suit has been held to have the legal effect of annulling or altering ipso facto a decree made by a subordinate Court in another suit.

6. I respectfully agree with the observation and hold that 8. 144 refers only to cases where a decree of the Court of first instance is reversed on appeal or revision. This view of Section 144 has been taken by the Patna High Court in the case of *Chintaman Singh v. Chuni Sahu* [1916] 1 Pat. L.J. 43.

7. It seems to me that the object of Section 144 is to provide a speedy and simple remedy for any party who has suffered by reason of an erroneous decree made by a Court of first instance and it does not apply to a case where the Court has to decide questions of conflicting rights under different decrees which may be very complicated.

8. I, therefore, hold that the decision of the Court below is not correct.

9. The result is that this appeal is allowed and the application of the respondents dismissed with costs in both the Courts We fix the hearing-fee in this Court at three gold mohurs.

Panton, J.

10. I agree.