

(1868) 01 CAL CK 0008

Calcutta High Court

Case No: None

In Re: Anonymous Case

APPELLANT

Vs

RESPONDENT

Date of Decision: Jan. 29, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to us that s. 19 of Act XI of 1865 provides merely for cases in which the party in whose favor the decree is given wishes to have immediate execution, and makes an application to the Court for it, either against the person or against the moveable property of the debtor. The Judge of a Small Cause Court, as regards immoveable property, has not the same power as the ordinary Courts. He is not authorized to seize or sell, or to deal with immoveable property in execution as the other Courts are. But if there is immoveable property within the district, and the moveable property within his district is not sufficient to satisfy the decree, then he may send a copy of the judgment, with a certificate of the amount which remains due under it, to any Court of Civil Judicature having general jurisdiction in the place in which the immoveable property of the judgment-debtor is situate, in order that it may be executed by that Court. By s. 47 of Act XI of 1865, the provisions of the CPC are, so far as they are applicable, extended to all suits and proceedings in the Small Cause Courts in the Mofussil; therefore, notwithstanding ss. 19 and 20, the provisions of s. 286 of Act VIII of 1859 apply to these Courts, and by virtue of that section, if there is no sufficient property within the jurisdiction of the Small Cause Court to satisfy the decree, the judgment may be sent by the Small Cause Court to any other Court indicated by the applicant for execution, if such Court be within the same district. If the Court to which the execution is sent is not within the same district, that is, not within the same zilla, then the Court of Small Causes is to send its judgment to the principal Civil Court of original jurisdiction in the district in which the applicant may wish to have his decree executed. In this case the decree was sent for execution from the Small Cause Court of Jessore to the Small Cause Court of Krishnaghur. The Judge of the latter Court was very right in not executing the

decree, inasmuch as the two Courts of Small Causes were not within the same district. The decree ought to have been sent to the principal Court of original jurisdiction of the district in which the property intended to be seized in execution was to be found, and that was the Court of the Civil Judge of Zilla Nuddea.

2. We think that the Judge of a Small Cause Court may send a decree to another Court for execution, if no property is to be found within the jurisdiction of his own Court sufficient to satisfy it. If the Court to which it is sent be not a Court in the same district, the decree must be sent to the principal Court of original jurisdiction in the district in which it is intended to be executed. An expression of this opinion may be sent to the Judge of the Small Cause Court, but this decision will not be binding upon any individual party, as the case has been referred without giving the Court the names of the parties. The Judges for the future should be careful in sending up references to this Court in Small Cause Court cases to give the names of the parties, so that, by giving notice, they may have an opportunity of appearing and arguing the case before this Court.

¹ The first of these letters, dated the 28th April 1865, was as follows:--

"I am directed to acknowledge the receipt of your Letter, No. 125, of the 12th instant, and in reply to state that the question therein submitted is very indefinitely put. The Court do not think s. 286 of Act VIII of 1859 is applicable to it. They observe that the law of the Small Cause Courts now is Act SI of 1865, passed on 15th March last. By s. 19 of that Act, process may first issue out either against the person or personal property, either general or specified, within the local limits of the Court's jurisdiction; and if, after the sale of the moveable property of a judgment-debtor, a portion of the judgment remains unsatisfied, and the holder of the judgment desires to issue execution on any immoveable property, then the Court, on application of the decree-holder, can, under s. 20, grant him a copy of the judgment and a certificate of the sum remaining due; and on presentation of the same to any Court of Civil judicature having general jurisdiction in the place in which the immoveable property of the judgment-debtor is situated, such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases. It is clear that the words "general jurisdiction" refer to the ordinary Civil Courts; and to them, therefore, the applications should be made. Moveable property beyond the local limits of a Small Cause Court seems not to be liable to be taken in execution."

The second letter, dated 7th July 1865, was in answer to a question requesting "instructions on a reference from the Munsif of Khoolneah as to whether the signature of a clerk of a Small Cause Court to a decree certificate is sufficient to enable a Civil Court to execute the decree."

After answering this question in the negative, the Registrar of the High Court proceeded:--

"I am to add, for your information and that of the Munsif, that it has been ruled that moveable property beyond the local limits of a Small Cause Court is not liable to be taken in execution."