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Calcutta High Court

Case No: Miscellaneous Special Appeal No. 197 of 1869

Dwarkanath Haldar — APPELLANT

Vs

Kamalakanth Haldar — RESPONDENT

Date of Decision: June 29, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.
In this case the plaintiff sued to recover a yearly palla, or turn of worship, in the month of Bhadra, immediately following that of Mahesh Chandra and others. His claim was founded on a mortgage of that palla, which he alleged had been foreclosed; and be obtained a decree to recover the palla claimed in his plaint. It appears that the claim in the plaint following the deed of mortgage entitled the plaintiff to recover a yearly palla in the month of Bhadra, following that of Mahesh Chandra and others. The Munsiff, on an application for execution, in which the decree-holder asked to be put into possession of a palla falling in a different month from that of Bhadra, considered that he could not put the plaintiff into possession of such a palla; and that as Mahesh Chandra had several pallas in the mouth of Bhadra, it was impossible for him, as the case stood, to ascertain which of the pallas of Mahesh Chandra"s the palla which the plaintiff had recovered was to be immediately following. He says, "when the decree-holder"s vakeel admits that Mahesh Chandra and others had more than one palla in that month, it is difficult to ascertain in the execution department the date of the palla of Mahesh Chandra and others, which was immediately followed by the palla in question." The plaintiff appealed to the Judge, who stated that the "palla was on the 1st of Bhadra 1263, and on the last day of Jaishta or the first Assar in 1275."

2. It is said, on the part of the plaintiff, that the palla which he recovered was not a palla necessarily falling in the month of Bhadra, but that it was a shifting one, and sometimes fell in Bhadra and sometimes in other months. But that was not the palla such as was mortgaged, nor was it a palla such as was decreed. All that the Court has to do in the execution department is to put the plaintiff into possession of the palla which was described in the decree; and if the palla which was described in the decree was so

uncertainly described, that it was impossible to decide what was decreed, execution could not be given; and if execution cannot be given of a decree so uncertain that it is impossible to ascertain what is decreed, it seems clear that a plaintiff cannot be put into possession by execution of any other thing than that which the decree describes.

3. It has been contended that evidence was admissible in the execution department to make that clear which the decree left uncertain, or to show that the decree intended to give the plaintiff something different from that for which the plaintiff sued, and which was awarded to him by decree. According to that contention, if a plaintiff were to sue for a lakh of rupees and the Judge were to say he could not ascertain what was due to the plaintiff, whether it was a lakh of rupees or one rupee, and he, therefore, decreed to the plaintiff as much as the defendant owed him. if the amount could be ascertained in the execution department, you would be deputing to the execution department that which the Judge should himself have determined; and if the contention is allowed, it goes further. It would allow the execution department to decide that the Judge intended to give to the plaintiff something different from that described in the decree, upon the ground that the Judge must have intended to give it.

4. If the Judge were to say, "I award to the plaintiffs a piece of land bounded on the west by the land of A.B.," the execution department could not go into evidence to show that the Judge meant a piece of land bounded on the east by the land of A.B.; or if the Judge should award to plaintiff 50 bigas of land, abutting on the land of A.B. in a certain village, and it should be shown that A.B. had five different pieces of land in the same village, you could not so into evidence in the execution department, for the purpose of ascertaining to which of the pieces of land of A.B. the decree referred. The law has allowed certain matters to be ascertained in execution, but beyond those, it is the duty of the Judge to take care that his decree is so precise that it is capable of execution without leaving it to the Court of execution to decide what the Judge intended to decree.

5. It appears to me that in this case if we were to allow the plaintiff to go into evidence to show that the palla which he recovered, instead of being a yearly palla in the month of Bhadra, was a palla shifting year by year, to be exercised sometimes in one month, and sometimes in another, we should be allowing evidence for the purpose of contradicting the decree; and if we were to allow evidence to be given in the execution department to show which of the pallas of Mahesh Chandra, the palla intended to be decreed to the plaintiff was immediately following, we should be allowing the execution department to do the duty of the Judge and to ascertain that which the Judge ought to have ascertained.

6. If by reason of an uncertainty in the mortgage or an uncertainty in the evidence, the Judge could not ascertain what particular right the plaintiff was entitled to recover, he ought not, on any of those grounds, to give a decree for plaintiff so uncertain that the Court of execution could not know what he intended to award.

7. I have made these remarks at length, because I have frequently noticed that in execution cases, the duty falls on the execution department to ascertain the details which ought to have been ascertained by the Judge and specified in his decree.

8. It was further contended that the defendant had no right to appeal in this case, upon the ground that the property about to be seized was that of his son; but that is not the only ground on which this appeal is preferred. One of the grounds of appeal is that the palla recovered being a yearly palla, to be exercised in the month of Bhadra, a palla to be exercised in any other month could not be delivered. It appears to me that the defendant had a right to take that objection; for if be had not, the decree might be executed by giving the plaintiff something which was never included in the mortgage. For these reasons, I am of opinion that this appeal ought to be allowed, and the order of the Judge reversed with costs.