
AIR 1915 Cal 42 : 24 Ind. Cas. 438

Calcutta High Court

Case No: None

Rakhal Chandra Tewari

APPELLANT

Vs

Manmotha Nath Mitter
and Others

RESPONDENT

Date of Decision: Jan. 8, 1914

Citation: AIR 1915 Cal 42 : 24 Ind. Cas. 438

Hon'ble Judges: Beachcroft, J; Asutosh Mookerji, J

Bench: Division Bench

Judgement

1. We are invited in this appeal to set aside an order by which the District Judge has dismissed an appeal as improperly framed. The respondents held two decrees against the appellant, made in two different suits. The decree-holders presented two distinct applications for execution of those decrees. The judgment-debtor, now appellant before this Court, took objections to the execution of each of those decrees. The objections in the two cases were similar in character and were considered in one judgment. The Court delivered judgment in one case and then added that as this judgment would govern the other case, a copy thereof would be kept in the other record. The judgement-debtor preferred one joint appeal against the orders in the two cases. When the appeal was set down for disposal, objection was taken by the respondents that the appeal was incompetent and that there should have been two separate appeals. In support of this contention reliance was placed upon a decision of this Court in a previous case between the same parties Rakhal Chandra Tewary v. Manmatha Nath Mitter 10 Ind. Cas. 415 : 15 C.W.N. 994.. As this decision was conclusive upon the question raised, the appellant prayed that the memorandum of appeal might be treated as the memorandum in one of the cases. The District Judge held that he was not entitled to adopt this course at that stage and dismissed the appeal. Against this order the present appeal has been preferred.

2. In support of the appeal, it has been urged that the District Judge has taken an erroneous view of the law and that upon the authority of the decision of Kali Charan Dutt

v. Manodabala Dasi 15 Ind. Cas. 897 : 16 C.L.J. 591 : 17 C.W.N. 526. the appellant was entitled to prefer one joint appeal against two orders in two distinct execution proceedings founded on two separate decrees made in two different suits. The decision mentioned, however, has not the remotest application to the circumstances of the present case, as it is an authority, merely for the proposition that an order for consolidation of several suits can be made in a proper case in the exercise of the inherent powers of the Court. In the first place, no order for consolidation has ever been made in the cases now before us. In the second place, the case mentioned is no authority for the proposition put forward by the appellant, namely, that if there are two distinct orders in two separate execution proceedings, their propriety may be questioned in one joint appeal. The contention of the appellant on the merits must consequently be overruled.

3. The appellant has finally prayed that he may now be allowed to make his election and to treat the memorandum of appeal presented to the District Judge as a memorandum in one of the cases. We are of opinion that his prayer should not be granted. In the previous case between the parties, to which reference has already been made, the appellant was allowed this opportunity, but he resolutely declined to avail himself of it. He argued that case in person, he is a member of the legal profession and he must be taken to have been fully conversant with the effect of the decision. When he preferred one appeal in the present instance against two distinct orders, he did so with his eyes open and in defiance of the previous decision of this Court. As a result of his appeal, execution proceedings have been stayed for many months in both the cases. He has thus gained an advantage which he could not possibly have obtained if he had preferred only one appeal against the order in one of the cases, as he now proposes to do provided he is allowed to make his election. He has deliberately trifled with the Court, and it is too late for him now to ask for an indulgence.

4. The result is that this appeal is dismissed with costs. We assess the hearing fee in this Court at three gold mohurs.