

Ram Lal Mondal and others Vs Khiroda Mohini Dasi and Others

Court: Calcutta High Court

Date of Decision: July 29, 1913

Judgement

1. The parties in this case were judgment-debtors under a decree obtained by one Narendra Bose. The Plaintiff's property was attached in

execution and he then bought the whole decree benami. He tried to execute it against the other judgment-debtors but failed and he then brought

this suit for contribution. The lower Appellate Court has referred in strong terms, which are not without justification, to the Plaintiff's conduct in

execution and has held that in accordance with justice, equity and good conscience the suit should be dismissed. The misconduct of the Plaintiff lay

in his attempts to defeat sec. 232B of the former Code. That section forbids the execution of a decree purchased by one judgment-debtor against

his fellows. This provision of law the Plaintiff tried to evade by falsely representing to the Court that somebody else had purchased the decree. The

reason for the enactment of this provision is given in the case of Soroop Chunder Hazra v. Troylakhya Nath Roy 9 W. R. 230 (1868). Apparently

it was thought wrong that one judgment-debtor should buy the decree for less than the full amount due and then execute it against his fellows for

the full amount due, and the position of co-judgment-debtors was compared to that of surely and principal. I do not myself fully understand why it

is worse for a judgment-debtor to realise more than he has paid for a decree than it is for a stranger. The judgment-debtor need not necessarily

stand in a fiduciary relation to the others. A stronger objection to my mind is that the purchasing judgment-debtor might execute the whole decree

against one of his fellows who might then purchase it and execute the whole against another and so on. This would be prevented by driving the

purchaser to a suit for contribution. But in any case there does not seem to be the least reason for supposing that the Legislature intended that a

judgment-debtor purchasing a decree should be deprived of all claim to relief against his fellows. It has often been held that having regard to the

provisions of sec. 232B such a purchase is equivalent to paying off the decree. In that case the judgment-debtor is clearly entitled to compensation

on the principle of sec. 69 of the Contract Act.

2. Next the lower Appellate Court holds that the Plaintiff has not proved the payment of the purchase money. This point however was not

traversed or put in issue and the learned District Judge was not entitled to decide it against the pleadings. I would therefore decree the Appeal and

restore the order of the Court of first instance but as the Plaintiff has been abusing the process of the Courts and for years has been harassing these

Defendants by taking proceedings against them which he knew perfectly well to be illegal I would make him bear his own costs throughout.

Ray, J.

I agree.