

**(1913) 07 CAL CK 0061**

**Calcutta High Court**

**Case No:** Appeal from Appellate Decree No. 1980 of 1910

Ram Lal Mondal and others

APPELLANT

Vs

Khiroda Mohini Dasi and Others

RESPONDENT

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**Date of Decision:** July 29, 1913

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### **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.