
(1918) 08 CAL CK 0060
In the Calcutta High Court

Aduram Haldar

APPELLANT

Vs

Nakuleswar Rai Chowdhury and Others

RESPONDENT

Date of Decision : 21-08-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, 47

Citation : AIR 1919 Cal 368 : 49 Ind. Cas. 137

Hon'ble Judges : Syed Shamsul Huda, J;Panton, J

Bench : Division Bench

Judgement

1. These three appeals are preferred against the order of the District Judge of Khulna reversing the decision of the Munsif of Bagerhat and directing delivery of possession of certain properties to the decree-holder auction-purchaser in three separate proceedings.

2. The first question for consideration is whether an appeal lay to the District Judge against the order of the Munsif. It appears that in execution of certain decrees the decree-holder purchased certain properties and on the confirmation of the sale applied for delivery of possession.

3. The appellants objected that they were not the judgment-debtors though bearing the same names, that those properties belonged to them and were not included in the certificate of sale.

4. The learned Munsif refused the application of the decree holder auction-purchaser on the ground- that he was not satisfied that the objectors were the judgment-debtors. This order was in effect an order in a proceeding under Order XX. I, Rule 97, of the CPC from which no appeal lay to- the District Judge. The learned Judge, however, treated the order as one u/s 47 of the Civil Procedure Code, and upon this view of the case assumed jurisdiction as a Court of Appeal and going into the merits came to the conclusion that the decree-holder was entitled to an order for delivery of possession.

5. It is argued by the learned Vakil for the appellant that an order allowing or

refusing delivery of possession after an execution sale is not an order u/s 47 of the Code of Civil Procedure, even where the decree-holder is the auction-purchaser, and that as such no appeal lay to the District Judge. The question whether an appeal lies against an order of this nature has been considered in several cases in this Court and the decisions are not uniform. Our attention has been drawn to the case of Sasibhushan Mooherjee v. Radhanath Bose 25 Ind. Cas. 267 : 20 C.L.J. 433 : 19 C.W.N. 835. In this case all the earlier decisions have been reviewed, and it has been held that such an order is not an order u/s 47 of the Civil Procedure Code. The same view appears to have been taken in a case decided by a Full Bench of the Patna High Court, Abdul Gani v. Raja Ram 35 Ind. Cas. 468 : 20 C.W.N. 829 : 1 P.L.J. 232 : 3 P.L.W. 62. Following these decisions we hold that no appeal lay to the District Judge and that the orders passed in appeal were without jurisdiction. Against the orders so passed it is now well settled that an appeal lies to this Court.

6. We accordingly set aside the order of the District Judge and restore the order of the Munsif in all the three cases under appeal with costs of this Court and of the Court of Appeal below. Hearing fee is assessed at one gold mohur in each case.