
(1895) 05 CAL CK 0007
In the Calcutta High Court

Aghore Kali Debi

APPELLANT

Vs

Prosunno Coomar Banerjee and Others

RESPONDENT

Date of Decision : 28-05-1895

Acts Referred:

Citation : (1895) ILR (Cal) 827

Hon'ble Judges : W. Comer Petheram, C.J.;Beverley, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J. and Beverley, J.—The questions here are : (a) whether an application to the Court by a decree-holder, who has himself purchased some of his debtor's property at an auction sale, to receive the amount of poundage from him, is an application made in accordance with law to the proper Court to take some step in aid of execution of the decree; and (b) whether an application by him to a Court, to which his decree has been sent for execution and which has realized a portion of the debt to give him the decree as he requires it for taking out execution in the Court of another Munsif, is such an application.

2. The learned District Judge has answered the first question in the negative, and, as we agree with him, it is not necessary for us to say more on that point. He has, however, answered the second question in the affirmative, and in that answer we are unable to agree.

3. When a decree, which has been sent by the Court which passed it to another Court for execution, has been executed or partly executed by that Court, the proper procedure, as prescribed by Section 223 of the Civil Procedure Code, is for that Court to certify what has been done to the Court which passed the decree, and if this is not done, the decree-holder may, no doubt, apply to the executing Court to send the necessary certificate, and though this is not expressly provided, to return the decree itself if it has not been completely executed.

4. This is what was done in the case of Krishnayyar v. Venkayyar ILR Mad. 81,

and was held by that Court to be an application to take a step in aid of execution within the meaning of the law of limitation, inasmuch as, we understand, that it was an application to a Court to take a step which it was necessary should be taken before the execution could proceed. The present case is entirely different, as this was merely an application by the decree-holder to the Court to which the decree had been sent to give the partially executed decree to him. In giving the decree to him, the Court did not take any step in aid of execution, as it is not one of the things which that Court was empowered or required to do by law for the purpose of executing or assisting to execute the decree; and although it may be that the object of the decree-holder in getting possession of the decree was to get it further executed, we do not think his application to have it given into his possession can by any forcing of the words, be held to have been an application to a Court, according to law, to take a step in aid of execution of the decree. As for these reasons we disagree with the judgment of the learned Judge, we set aside his decision and restore that of the Munsif with costs in both Courts.