

(1863) 06 CAL CK 0003
In the Calcutta High Court
Case No : Special Appeal No. 2328 of 1862

Ananda Mayi Dasi

APPELLANT

Vs

Patit Pabuni Dasi and Others

RESPONDENT

Date of Decision : 03-06-1863

Acts Referred:

Citation : (1863) 06 CAL CK 0003

Judgement

Sir Barnes Peacock, Kt., C.J.—This case has been referred to a Full Bench by a Division Court, for the purpose of deciding whether this regular suit is maintainable. It appears that the plaintiff had purchased a genuine decree, with all out standings, amongst which were two summary cases for rent against the defendant. When the plaintiff sought to execute the decree, the defendant set up an answer to the execution of the decree that he had paid the amount of the decree, and acquaintances were produced by him, which the Deputy Collector held to be genuine. Finding that the decree had been satisfied, the Deputy Collector refused to execute, upon which the plaintiff appealed to the Collector, but without success. He then commenced a regular suit, and in his plaint prayed for execution of the summary decree according to the usual practice. We are not aware of any case in which it has been held that a suit can be maintained in a regular Court to enforce a decree of a Revenue Court, which the Revenue Court has refused to execute upon the ground that it has been satisfied. We are not now called upon to decide whether a summary decree would be a bar to a suit in a regular Court for the recovery of the rent decreed in the summary Court, because the plaintiff does not ask a decree for the rent, but for execution of the summary decree.

2. The lower Court decreed the plaintiff's claim. In appeal the Judge reversed the judgment of the lower Court. The majority of the Court are of opinion that the case is governed by the opinion of the Sudder Court of the 5th July 1859 in *Kasissur Surma Lahooree v. Goluk Kishore Acharj Chowdhree S.D.A.*, 1859, 937, which they think was founded on good sense, and ought to be upheld.

3. This appeal will, therefore, be dismissed with costs and interest.

Steer, J.

4. I regret to be obliged to dissent from the Chief Justice and my other learned colleagues on this question.

5. I take it, without looking to the too literal construction of the plaint, that the plain object of the plaintiff was to get from the Civil Court what he has failed to get from the Revenue Court. If, in the investigation of a summary suit for rent, a Collector had refused to award any rent, on the ground that the receipts filed showed no rent to be due, there is no question that a regular suit would lie to contest the Collector's award. By parity of reasoning, there should be a regular suit where a Collector, after a decree has been passed, refuses to allow execution of the decree, on the ground that subsequent payments have satisfied the decree. In either way (the refusal to give a decree, or the refusal to allow a decree to be executed) the party claiming the arrear is equally injured by the Collector's decision; and I hold that by the general tenor of the Regulations referring to summary awards by the Collector, a remedy is given to parties aggrieved to institute a regular suit to set aside the summary award. This view seems to be consistent also with the general past practice of the Civil Courts; and on these grounds I consider that the Civil Court has the power to entertain a civil suit to declare the order of the Collector erroneous, and to give to the plaintiff in the suit what the Collector should have given him, provided of course that the action is based on true grounds.