
(1944) 02 CAL CK 0013
In the Calcutta High Court

Anil Kumar Basu

APPELLANT

Vs

Roy Biman Behari Mitra for Self and Executor to Estate of Roy
Banku Behari Mitra and Others

RESPONDENT

Date of Decision : 08-02-1944

Acts Referred:

Bengal Tenancy Act, 1885 — Section 168A, 168A(i)(a)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 53

Citation : AIR 1944 Cal 240

Hon'ble Judges : Sharpe, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—There is no dispute about the facts of this case, which lie within a very short compass. The respondents before us Roy Biman Behari Mitra and others obtained a rent decree against the appellant and hiecosharers In respect of tenure for a sum of about Rs. 2000. The appellant on the other hand, obtained rent decrees against the respondents in 24 rent suits for various sums of money aggregating to about Rs. 1700. The respondents in execution of the decree obtained by them, attached the 24 rent decrees passed against them in favour of the appellant under Order 21, Rule 58, Civil P. Order The appellant thereupon preferred objections under 47, Civil P.C. contending inter alia that u/s 168A, Ben. Ten. Act, the only remedy of the decree-holders was to proceed against the tenure in arrears and they were incapable of attaching any other property belonging to the judgment-debtor. The whole controversy thus centred round the point as to whether the proceedings in execution started by the respondents under Order 21, Rule 53, Civil P.C. were barred under the provisions of Section 168A (i) (a), Ben. Ten. Act. The trial Court answered this question in favour of the judgment-debtor. The lower appellate Court has held against him. He has now come up on second appeal to this Court.

2. Having heard the learned advocates on both sides, we have come to the conclusion that the, provisions of Clause (a) of Section 168A (i), Ben. Ten. Act; do not stand in the way of application for execution started by the respondents

decree-holders. This Clause provides that a decree for arrears of rent shall not be executed by attachment and sale of any moveable or immovable property other than the entire tenure or holding to which the decree relates. Thus all that is prohibited in execution of a rent decree is the attachment and sale of any property moveable or immovable belonging to the judgment-debtor other than the tenure in arrears. The language of the section does not bar any other form of execution, available to the decree-holder under law, by which he can attempt to realise the decretaldues without attaching and putting up to sale any property of the judgment-debtor except the defaulting tenure. Section 51, Civil P.C. enumerates the various ways in which the Court may Order execution of a decree according as the nature of the relief granted may require, and save and except the limitation imposed by Section 168A (i) (a) mentioned above it is for the decree-holder to choose in which of the several modes specified in the section he would execute the decree. In the case before us, the decree-holders are not seeking to attach and sell any moveable or immovable property belonging to the judgment-debtor other than the defaulting tenure and what they have applied for is to attach certain decrees, which the judgment-debtor obtained against them, under Order 21, Rule 58, Civil P.C. and realise the dues covered by them as representatives of the judgment debtor in the manner contemplated by law. Whether they can as representatives of the judgment debtor execute a decree which the latter obtained against them is a question, which has not been raised before us and upon that we do not desire to express any opinion. But the proceeding certainly does not contravene the provisions of Section 168A (i) (a), Ben. Ten. Act.

3. It is a settled principle of construction that in construing an Act, the Court of law has got to ascertain the intention of the Legislature from what the latter has chosen to enact either in express words or by reasonable and necessary implication; and a judicial tribunal is bound to give effect to the clear language used in a statute even though it is of opinion that the consequences are not such as could have been contemplated by the Legislature. It may be argued that the intention of the Legislature in enacting Section 168A, Ben. Ten. Act, was to exonerate a tenant from any personal liability under a rent decree but it has not said so in proper language, nor are there any words in the section which show that the only form of execution which is available to the decree-holder is to attach and sell the defaulting tenure and nothing else. The section is an encroachment upon the rights which the landlord decree-holder had under the ordinary law and certainly it cannot be extended beyond what is warranted by the actual language of the section. Mr. Das has argued that the section prohibits not only attachment and sale of any property other than the tenure in arrears but even an attachment without sale comes within the prohibition and he invites us to construe the word "and" coming between "attachment" and "gale" as "or." We do not think that this contention is sound. The intention of the Legislature was obviously to prevent the sale of any property belonging to the judgment debtor other than the tenure in execution of a rent decree. An attachment comes

within the prohibition of the section only so far as it is a necessary step to the sale of the property. The words have been taken verbatim from Section 51, Clause (b), Civil P.C. and it seems to us that the latter part of the Clause was not reproduced in Section 168A, Ben. Ten. Act, probably because no question of sale of any property without attachment can possibly arise when a rent decree is being executed. We do not think that a mere attachment without sale of the property does at all come within the purview of Section 168A, Ben. Ten. Act, and as the proceeding started by the decree-holders does not involve sale of any property belonging to the judgment debtor we are of opinion that it is not hit by Section 168A. The result therefore is that we affirm the decision of the Court of appeal below and dismiss this appeal. We make no Order as to costs. No Order is necessary in the connected rule.

Sharpe, J.

3. I agree.