

(1902) 05 CAL CK 0019

In the Calcutta High Court

Case No : Appeal from order No. 228 of 1901

Beg Raj Marwari and Goberdhan Marwari

APPELLANT

Vs

Sreemutty Kundali Debya

RESPONDENT

Date of Decision : 08-05-1902

Acts Referred:

Citation : (1902) 05 CAL CK 0019

Final Decision : Dismissed

Judgement

1. This is a somewhat complicated case and we have had some difficulty in determining the course likely to do justice between the parties. In execution of a decree the judgment-debtor objected to the attachment of certain properties claiming them as shebait of an idol. Proceedings were taken purporting to be under sec. 278, C. C. P., and the Munsif allowed the objection and released the properties from attachment. On appeal against this order, the District Judge held, that an order under sec. 278 was not open to appeal and he accordingly dismissed it. It has been represented to us that this case comes within the rule laid down by the majority of the Judges forming the Full Bench in the case of Panchanan Banerjee v. Rabia Bibi I. L. R. 17 Cal. 711 (1890), and that the order being one under sec. 244, the decree-holder had a right of appeal. We find ourselves unable to distinguish this case from that of the Full Bench. It seems to us that the order passed by the Munsif was under sec. 244 rather than on a claim made under sec. 278 regarded as a claim by a third party, that is by one not connected with the execution of the decree. It is an order passed on such a claim that the law allows the right of appeal. At one time we were disposed to direct the District Judge to hear the appeal regarding the order of the Munsif as an order under sec. 244 ; but it has been represented to us that, although the issues in a matter under sec. 244, and in what is known as a claim case, on an objection raised by a third party under sec. 278, may be the same, the proceedings are generally, indeed almost always, of a different character. The proceedings under sec. 278 are of a summary character and are open to a suit brought by the unsuccessful party. The proceedings under sec. 244, on the other

hand, from the finality which the order passed in them may acquire, are more carefully conducted, and, therefore, it is represented to us that to deal with the objection taken by an order which may become final and not open to appeal on proceedings manifestly taken by the Munsif under sec. 278 which are summary proceedings would be calculated to do in justice to the objecting party who would not have thought it necessary in such a proceeding to adduce all the evidence available to him. We think there is considerable force in this objection. At the same time we are not inclined to allow the order to remain by reason of a mistake made by the Munsif in holding the proceedings under sec. 278 rather than under sec. 244. Justice, we think, can be done between the parties by declaring that the proceedings of the Munsif under sec. 278 are null and void and without jurisdiction, and by directing that he do take proceedings on the objection taken by the judgment-debtor and conduct such proceedings in the manner directed by sec. 244. The appeal will be dismissed. The order which we now pass is one made under our revisional powers. Each party will pay his own costs throughout.