

(1942) 08 CAL CK 0014
In the Calcutta High Court

Birendra Lal Das Choudhuri and Others

APPELLANT

Vs

Abdul Hekim

RESPONDENT

Date of Decision : 06-08-1942

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1943 Cal 155

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This appeal is by the decree, holders. They obtained a decree for a declaration of their title for khas possession and costs. In the present execution case they are attempting to recover their costs. The respondent, who is one of the judgment-debtors, filed an objection u/s 47, Civil P.C., on the ground that the case must be stayed under Section 3 of Assam Act (Act 1 of 1941). The learned Subordinate Judge allowed the application, stayed the proceedings against the respondent and allowed them to go on against (the other judgment-debtors. The decree, holders appealed. The District Judge held that the Subordinate Judge was wrong, but he dismissed the appeal on the ground that it was incompetent. As there was some doubt as to the competency of the present appeal, the appellants have also obtained a rule.

2. The first point for consideration therefore is whether the appeals in this Court and in the lower appellate Court are competent. The learned District Judge took the view that the decision of the Subordinate Judge has no finality about it and, therefore, it. could not be said that it amounts to a decree within the meaning of the Civil Procedure Code. A very similar point under the Bengal Agricultural Debtors Act came up for consideration before my learned brothers Nasim Ali and Eau JJ. in 44 c.w.N. Nafar Chandra Sardar and Others Vs. Kali Pada Das, . They were dealing with a case in which the lower Court refused to stay proceedings. I myself was inclined to take the view at present taken by the learned District Judge and in Purna Lall Nandan Vs. Bhupendra Chandra Dutt, attempted to

distinguish a case such as the present where the proceedings were merely adjourned. However, on a later occasion, I had to confess that this attempt was not successful. The result is that, whether an objection with regard to the Bengal Agricultural Debtors Act is allowed or dismissed, it is subject to an appeal. Now, the present case appears to me to be stronger. Act 1 of 1941 is a delaying Act. It may be that when it comes to an end there will be some new statute which will prevent the appellants from executing the decree at all. The decision made by the Subordinate Judge undoubtedly conclusively determines the claim of the appellant to execute their decree now under the existing law. I am, therefore, of opinion that the appeals were competent.

3. On the merits I agree with the view taken by the learned District Judge. The first argument made is that the present decree is not a decree for money. I have already stated that the decree was obtained by the appellants in the suit which was not a money suit at all but a title suit. It seems to me to be impossible to say that a decree in a title suit declaring the decree-holder's title and giving him khas possession and costs can by any stretch of the imagination be called a decree for money. Then in the second place, Section 3 only applies in a case in which the sole judgment-debtor or the entire body of judgment-debtors is an agriculturist. In the present case there are 08 judgment-debtors. No attempt was made to show that any of them, except the respondent, comes within the terms of Section 3. The appeal is accordingly allowed, the orders of the Court below are set aside and the Subordinate Judge is directed to proceed with the case in accordance with law. As the respondent only is appearing in the rule, I make no order as to costs in this Court. He will pay the costs of the appellants in the lower appellate Court. As I have held that the appeal is competent no order is necessary in the rule.