

**(1886) 12 CAL CK 0007**  
**In the Calcutta High Court**

Fanindro Deb Raikut

APPELLANT

Vs

Rani Jugudishwari Dabi

RESPONDENT

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**Date of Decision :** 22-12-1886

**Acts Referred:**

Bengal Civil Courts Act, 1871 — Section 10

**Citation :** (1887) ILR (Cal) 316

**Hon'ble Judges :** Prinsep, J; Agnew, J

**Bench :** Division Bench

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## Judgement

1. The matter before us relates to the execution of a decree obtained by Kali Mohun against the executors of the estate of Jogendro Deb, deceased acting under an order of the Court, and also against the minor, stated to be his lawfully adopted son, represented by the widow of the deceased as guardian ad litem. The decree was for money borrowed by the executors to celebrate the funeral ceremonies of the deceased Jogendro, and was made on the 29th July 1881. In 1878 a suit was brought by Fanindro the appellant before us, to establish his right to succeed to the estate of Jogendro, and to set aside the adoption of the minor as well as the will in his favour. On the 11th of November 1879, Fanindro obtained a decree in the Court of first instance. An appeal against this order was pending before this Court while the suit by Kali Mohun was still under trial. That appeal was decided on the 24th June 1881, in favour of the adoption, reversing the judgment of the first Court which had been obtained by Fanindro. At that time also, it may be observed, Kali Mohun's suit had not been decided. On the 27th of December 1881, Kali Mohun took out execution and attached certain property belonging to the judgment-debtor. On the 22nd of February 1882, Jugudishwari, the widow of Jogendro and the guardian of the minor whose adoption had been disputed, purchased this decree, and on the 20th of March following was substituted in the place of the decree-holder as his assignee. No further proceedings were taken, and on the 5th of April the proceedings terminated. On the 6th of November 1884, Jugudishwari, the assignee of the decree-holder, applied for execution against Jogendro, who had attained

majority. The appeal in the suit brought by Panindro was heard by the Privy Council in the early part of December, and judgment was delivered on the 14th February 1885, setting aside the decree of this Court and restoring that of the first Court in favour of Panindro (see L.R., 12 Ind. App., 72). Nevertheless the execution of Kali Mohun's decree proceeded, and, on the 26th of March, the estate of the deceased Jogendro in Bycuntapore was attached. On the 2nd April orders for its sale were passed, and on the 7th of May, Panindro objected that execution could not be taken out against him, as he was not one of the judgment-debtors or a party to the suit. This objection was allowed on the 11th of June; and the Subordinate Judge expressed the opinion that "the proper course will be for decree-holder to apply to have the name of Panindro Deb substituted for that of Jogendro Deb, on the ground that the estate of Jogendro Deb is liable." The proceedings in execution were renewed on the 16th July, and on the 25th of September Panindro again raised objections, which may be shortly described as those which are now presented before us in this appeal. The Subordinate Judge disallowed them on the 20th of May, 1886. It is first objected that Panindro is not bound by any of the acts of the executors and others acting under the will and adoption made by Jogendro Deb, which at his suit have been declared invalid by their Lordships of the Privy Council. To this it is replied that, so long as the probate was operative, the acts of the executors within the authority conferred on them bound the estate especially in a matter connected with the performance of the religious ceremonies of the deceased under Hindu law, and further that in lending money to them for that purpose Kali Mohun could recover from the estate. For Panindro it is stated that any ceremonies performed by a person unlawfully adopted are not valid, and therefore cannot be charged against the estate; and further that the funds in the hands of the executors were much more than sufficient for this purpose. Another objection raised is to the jurisdiction of the Court of the Sub-Judge of Eungpore to pass the decree now under execution, and of the Court of the Sub-Judge at Jalpaiguri to take proceedings in execution. This is an exceedingly complicated and difficult matter. The suit was instituted by Kali Mohun on 11th February, 1881, in the Court of the Sub-Judge of Rungpote, which, it is not disputed, had jurisdiction. On 24th March following a notification was published by the Government of Bengal u/s 10 of the Bengal Civil Courts' Act of 1871, vesting the Deputy Commissioner of Jalpaiguri with powers of a Sub-Judge from the 1st April next, and further declaring that from that date the Sub-Judge of Rungpore shall cease to have jurisdiction in Jalpaiguri. We are next informed that on 6th April following the Registrar of the High Court under its orders directed the Sub-Judge to continue to exercise jurisdiction until further orders. He consequently proceeded with the trial and finally made a decree. Execution was however taken out in the Court of the Sub-Judge at Jalpaiguri. No order for the transfer of the decree u/s 223 of the Code appears to have been made, and it would seem that the proceedings were taken under authority of the Government of Bengal of 1st April. It would certainly not be open to a judgment-debtor to question in execution the jurisdiction of the Court which had made the decree, but Panindro, whom it is sought to bind by that decree, was no party to

it. He holds the estate from which it is about to be realized ; and he justly contends that he is entitled to an adjudication of all those objections before the decree can be realized from his estate. We are aware of no precedent under which an objection, such as have been raised before us, can be taken in the course of execution. Mr. Evans contends that it is for Fanindro in another suit to have himself absolved from liability under the decree, and that as it stands it can be executed against the estate. The matter is of considerable difficulty, but after some hesitation we have come to the conclusion that Fanindro cannot be held liable to satisfy the same, and that, if the decree-holder wishes to make him liable for the debt incurred, he should bring a separate suit in which matters which cannot be tried in the form in which the proceedings are now before us may be regularly and finally determined. Fanindro cannot be regarded as the legal representatives of those who incurred the debt, and if it be sought to bind him as now representing the estate which was then represented by the parties to the bond, he can be made liable only in a separate suit.

2. We accordingly set aside the order of the Sub-Judge and direct that execution be stayed.

3. Appellant will receive his costs.