

(1886) 11 CAL CK 0007
In the Calcutta High Court

Fonindro Deb Raikut

APPELLANT

Vs

Rani Jugodishwari Dabi and Rajessur Dass

RESPONDENT

Date of Decision : 29-11-1886

Acts Referred:

Citation : (1887) ILR (Cal) 234

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

Bench : Division Bench

Judgement

1. The appellant obtained a decree for possession of certain property, and in execution proceeded against a family dwelling-house said to have been occupied by Jugodishwari Dabi, who was not the judgment-debtor in the suit in which the decree was obtained. Obstruction was made, and, upon this matter coming before the District Judge, he dismissed the application for execution against this property on the ground that the lady was no party to the suit or decree. Against this order the decree-holder has appealed, A preliminary objection is taken that no appeal lies against this order of the District Judge. The matter, as represented to us, comes u/s 331 of the Code, and the order of the District Judge is practically a refusal to number and register the claim as a suit between the decree-holder as plaintiff and the claimant as defendant. The decree-holder complains that by this proceeding he has lost the opportunity of proving that the claimant is not entitled to protection u/s 331. The law declares that proceedings in a case u/s 331 are to be conducted in the same manner and with the like power as if a suit for the property had been instituted by the decree holder against the claimant under the provisions of Chapter V of the Code. Chapter V provides for matters relating to the institution of suits. The refusal of the District Judge to number and register the claim as a suit is therefore of the same effect as the refusal to register a plaint; or, in other words, it amounts to rejecting a plaint. Regarding the case from this point of view, the order of the District Judge would be appealable as being within the definition of a decree u/s 2 of the Code. The matter raised must, therefore, be tried in the manner provided for by Section 331. We accordingly set aside the order of the District Judge and direct

that he do proceed in accordance with the law.