

(1891) 07 CAL CK 0012
In the Calcutta High Court

Gopi Mohan Roy and Others

APPELLANT

Vs

Doybaki Nundun Sen and Others

RESPONDENT

Date of Decision : 10-07-1891

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19

Citation : (1892) ILR (Cal) 13

Hon'ble Judges : Tottenham, J; Ghose, J

Bench : Division Bench

Judgement

Ghose, J.—This is an appeal against an order of the District Judge of Beerbhoom directing that a certain property comprised in a mortgage decree be sold in execution of the said decree.

2. The property in question is situate within the local limits of the District Court of Nya Doomka, but it is one of the two properties that were mortgaged to the decree-holders under one and the same mortgage bond, the other property being situate within the jurisdiction of the Beerbhoom Court. The suit in which the decree was obtained was instituted u/s 19 of the CPC in the Beerbhoom Court, and a decree was passed in May 1890 in terms of suction 88 of the Transfer of Property Act for sale of both the parcels of property comprised in the mortgage.

3. It has not been questioned before us, nor indeed could it be questioned, that the District Judge of Beerbhoom had jurisdiction to make the decree he did; but what has been contended is that he could not sell the property within the local limits of the Nya Doomka Court, and that he was bound u/s 223 of the CPC to transfer the decree to that Court for sale of the property in question.

4. It seems to me, however, that if the Beerbhoom Court had authority to make the decree, it would have also authority to give effect to that decree by selling every parcel of the property comprised therein. Section 88 of the Transfer of Property Act provides that the Court should order chat, in default of the

mortgagor in paying the amount due to the mortgagee within the time appointed by the Court, the mortgaged property be sold, and that the proceeds of sale (after defraying the expenses of the sale) be paid into Court and applied in payment of what is due to the plaintiff, and that the balance, if any, be paid to the defendant. Now it seems to me that the Court is hardly in a position to give full effect to the provisions in this section, unless it has the power to sell the whole of the mortgaged property. The said provisions, I might here observe, are to the same effect as the form of a decree for sale given in the Civil Procedure Code, schedule IV, No. 128, which is applicable to the Original Side of the High Court, with this exception only, that there being no "Registrar or taxing officer" in the mofussil, as in the High Court, the direction as to the approbation of such an officer to the sale is omitted therein. This leads me to think that it was the intention of the Legislature to provide that the Court which makes a decree for sale should have authority over the sale itself. The proceedings in execution of a decree are, as has been so often said, but a continuation of the proceedings in the suit in which the decree is passed; and if the Court has jurisdiction to entertain the suit and make the decree, it seems to follow that it has jurisdiction to sell all and every parcel of property comprised in the decree, although one or other of the parcels may be beyond the local limits of its jurisdiction.

5. But it has been contended that u/s 223, Clause (c) of the Code of Civil Procedure, the Court which made the decree is bound to transfer it to the Court which has local jurisdiction over the property for the sale thereof. That section provides that the Court which made the decree may, on the application of the decree-holder, send it for execution to another Court if the decree directs the sale of property outside the local limits of its jurisdiction. This seems to be directory, and not mandatory. The section leaves it to the discretion of the Court, when the decree-holder makes the application to send the decree for execution to the other Court, that is to say, if it thinks it necessary to do so.

6. In the case of *Maseyk v. Steel and Co.* ILR Cal. 661 there were certain observations in the judgment delivered by me, which no doubt would seem to indicate that where the property to be sold is situate wholly outside the jurisdiction of the Court which made the decree, the proper procedure u/s 223 is to send the decree to the Court which has local jurisdiction for execution. But it will be observed that in that case the appeal was as regards the validity of the sale of a property partly situate within and partly outside the local jurisdiction of the Court which made the decree and sold the property (viz., the Rajshahye Court), and it was contended, among other matters, by the Counsel for the appellant that that Court had no jurisdiction to sell the property, or at any rate that portion of it which was situate outside its local limits and within the limits of the Nya Doomka Court. The observations I made on that occasion were meant for the purpose of meeting the argument that was then advanced; and though in the course of my remarks I indicated what I considered to be the proper course to be followed in a case like this, I did not intend to hold that the Court would be bound to send the decree to the other Court if the property be wholly outside its

own local limits; and indeed it was not necessary for the decision of the case that this should be so laid down.

7. I am of opinion that the Beerbhoom Court had jurisdiction to make the order for sale, and that there is nothing in Section 223 to take away that jurisdiction.

8. The learned vakil for the appellant relied in the course of his argument upon the decision of a Full Bench of this Court in the case of Prem Chand Dey v. Mokhoda Debi ILR Cal. 699; but that case has no real bearing upon the facts of the case now before us.

Tottenham, J.

9. I concur in dismissing the appeal; but I think it enough to say that I consider that the Judge who had the power to pass the decree for sale of the property in question had the same power to carry out his decree by selling that property.

10. The appeal will be dismissed with costs.