

(1921) 11 CAL CK 0009
In the Calcutta High Court

Hari Charan Roy Chaudhuri and Others

APPELLANT

Vs

Birendra Nath Saha and Others

RESPONDENT

Date of Decision : 24-11-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73

Citation : AIR 1921 Cal 749 : 70 Ind. Cas. 541

Hon'ble Judges : Cuming, J

Bench : Single Bench

Judgement

Cuming, J.—The facts of this case are as follows: The present petitioner obtained a decree for Rs. 286-3-9 against opposite party Nos. 4 and 5. On 2nd September 1920 in Execution Case No. 1203 they applied for execution of the decree and attached, certain Immovable properties of the judgment-debtor. The 9th March 1921 was fixed for the sale. On the day of sale the judgment-debtor deposited the entire decretal amount in Court and the sale therefore did not take place. Meantime, on 3rd February 1921, opposite party Nos. 1-3 and taken out execution of another decree and claimed to share rateably in the assets which would be realised by the sale in Execution Case No. 1203.

2. The Court, in spite of the objection of the petitioner, allowed the opposite party Nos. 1-3 to share rateably in the amount deposited in Court in Execution Case No. 1203.

3. Against this order the petitioners, the decree-holders in Execution Case No. 1263, have now moved this Court.

4. Their contention is that the expression assets in Section 73, of the CPC means assets realized by sale or otherwise in execution of the decree and that it does not include money brought voluntarily into Court.

5. The other party contend that it is immaterial how the money was brought into Court. They point out that the wording of the present section differs materially from the wording of the former section under the former Code, viz., Section 295.

6. Now the expression used in Section 73 of the present Code is "assets, held by the Court." In the former Code the expression used is "assets realized by sale or otherwise in execution of the decree." There is no direct ruling on the point in this Court since the amendment of the Code.

7. I will briefly note the cases cited by the petitioners.

8. The case of Sorabji Coovarji v. Kala Raghunath 12 Ind. Cas. 911 : 36 B. 156 : 13 Bom. L.R. 1193 undoubtedly supports his contention. In that case their Lordships held that "assets" meant assets held in the process of execution and that monies paid into Court under Order XXI, Rule 55 were not assets held by the Court within the meaning of Section 73.

9. The Madras High Court in Thiraviyam Pillai v. Lakshmana Pillai 47 Ind. Cas. 538 : 41 M. 616 : 35 M.L.J. 150 : (1918) M.W.N. 524 appears, however, to have taken the contrary view.

10. I have been referred by the petitioner to the case of Hart Saha v. Faizlar Rahman 18 Ind. Cas. 839 : 9 40 C. 619 : 18 C.L.J. 144 : 17 C.W.N. 636 : 19 C.W.N. 1125 as supporting his case.

11. But the facts of that case are different. In that case the property had been sold and money was deposited under Order XXI, Rule 89, and the sale set aside. As far as I can see, therefore, there is no authority on the point in this Court.

12. Now, comparing Section 73 of the present Code and Section 295 of the former Code we find that the words "realized by sale or otherwise in execution of a decree" have been deliberately omitted and the expression now used is "assets held by the Court".

13. One can only conclude that the omission of the word "realized by sale or otherwise in execution" was deliberate and that it was the intention of the Legislature that the term, "assets" should now include any assets held by the Court irrespective of the manner in which they came into possession of the Court. The scope of the section has been deliberately enlarged.

14. It has further been contended that the present application does not fall within the scope of Section 115, Civil Procedure Code. The learned Vakil contends that the Munsif has not committed any irregularity or exercised a jurisdiction riot vested in him by law or failed to exercise a jurisdiction vested in him.

15. This contention seems well-founded. The learned Munsif has, even if the contentions of the petitioner were well-founded, committed only an error of law.

16. That would be no ground for the Court to exercise its powers of revision u/s 115, Civil Procedure Code.

17. The Rule must be discharged with costs. Hearing fee one gold mohur.