

(1888) 01 CAL CK 0007
In the Calcutta High Court

Kashi Mohun Borua

APPELLANT

Vs

Bishnoo Pria

RESPONDENT

Date of Decision : 12-01-1888

Acts Referred:

Scheduled Districts Act, 1874 — Section 5

Citation : (1888) ILR (Cal) 365

Hon'ble Judges : Norris, J;Beverley, J

Bench : Division Bench

Judgement

1. This is an appeal from the decision of the Officiating Judge of Chittagong. That decision affirms the decision of the Munsif of North Pattia.

2. The facts of the case are these: The judgment-creditor, appellant,, obtained a decree in the Court of the Chittagong Hill Tracts on the 12th of June 1874. On the 15th of May 1876, he made an application for execution of the decree, and asked for a certificate of non-satisfaction to be sent to the Court of the Munsif of North Pattia; and we take it that as a matter of fact on or about the 15th of May 1876, a certificate was in due course sent, and in due course reached the Court to which it was sent. After the receipt of the certificate in that Court, various applications for execution have, from time to time, been made by the decree-holder, but nothing has been realized under the decree. The last application was made on the 17th of September 1886; and on that occasion, and, as far as we know, for the first time, the objection was taken by the judgment-debtor that under the provisions of Section 229 of the CPC the decree was not capable of execution by the Court of the Munsif of North Pattia. The Munsif accepted the argument of the judgment-debtor's vakil; and the Officiating District Judge has upheld the decision of the Munsif.

3. We think that the conclusion at which the District Judge has arrived is erroneous, and must be set aside. At the time the judgment-creditor obtained this decree, the Civil Procedure Code, Act VIII of 1859, was in force ; and Section 284 of that Act is as follows: "A decree of any Civil Court within any part

of the British territories in India, or established by the authority of the Governor-General of India in Council in the territories of any foreign Prince or State which cannot be executed within the jurisdiction of the Court whose duty it is to execute the same, may be executed within the jurisdiction of any other such Court in the manner following;" and in the subsequent sections the sending of the decree to another Court and the proceedings thereupon to be taken are described. Those proceedings are to all intents and purposes similar to those under the Code of 1877, reproduced in the Code of 1882, The words "any Civil Court within any part of the British territories in India," occurring in Section 284 of Act VIII of 1859, are omitted from Section 229 of the present Code. It was argued in the lower Court, and it is also argued here, that the omission of these words in Section 229 operates to deprive the judgment-creditor of his right to have his decree which he had obtained when the Code of 1859 was in force executed in the Munsif's Court. It is to be noted that the Code of 1877 is, as the previous Code of 1859 was, a Code to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature. It deals with procedure, and almost entirely with procedure. The appellant in this case had a decree in 1874, and up to the 1st of October 1877, the day when the CPC of 1877 came into force, he had by virtue of the provisions of the Code of 1859, a right to have his decree sent to any Civil Court under the provisions of Section 284 and have it executed. Now the question is, are there any distinct words in the Code of 1877 taking away from him the right which he already possessed ? It is admitted that there are no such express words. Ought we then to hold that the right is taken away by implication ? We do not think we ought. We think that the intention of the Legislature was, with regard to decrees obtained in Scheduled Districts after the Code of 1877 came into force, that those decrees should not be executed by Courts in British India unless and until, under the provisions of Section 5 of the Scheduled Districts Act of 1874, the Government had issued the notification therein referred to applying to the Scheduled Districts such portion of the Code of Civil Procedure, that is, the Code of 1877, as they thought proper to apply. It appears that no such notification has been made; and what might have been the result of those proceedings if the application to send the decree for execution to the Munsif's Court had been made after the Code of 1877 came into force it is not necessary to determine, or to express any or the slightest opinion about. All that we need say is that we do not think that the right which the judgment-creditor had acquired at the time he applied for the certificate of non-satisfaction has been taken away, either by express words or by implication, by the Code of 1877. This appeal must, therefore, be allowed with costs; and the Munsif must be directed to proceed with the execution case on the merits. He will take up the case de novo, and adjudicate upon all the other objections which were raised by the judgment-debtor.