
(1887) 01 CAL CK 0004
In the Calcutta High Court

Koilash Chunder Roy and Another

APPELLANT

Vs

Jodu Nath Roy and Others

RESPONDENT

Date of Decision : 19-01-1887

Acts Referred:

Bengal Tenancy Act, 1885 — Section 232

Citation : (1887) ILR (Cal) 380

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

Bench : Division Bench

Judgement

1. Section 148 (h) declares that, "notwithstanding anything contained in Section 232 of the CPC an application for execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become, and is vested in him." In this case it is admitted that the exception stated does not exist. We have, therefore, to consider, first, whether the assignment of the rights of Srish Chunder, which was admitted by the Court of execution u/s 232 before the Bengal Tenancy Act became law, entitles Appeal from Order, No. 873 of 1886, against the order of J. Crawford, Esq., District Judge of Nuddea, dated the 14th of August 1886, reversing the order of Baboo Nuffer Chunder Bhutto, Subordinate Judge of that district, dated the 7th of August 1886. the assignee to proceed to execution in respect of the rights of the assignor; next, whether the assignment of the rights of Joykali, said to have been made before the operation of the Bengal Tenancy Act but not notified to, or recognised by, the Civil Courts until after that Act, entitles the assignee to the assistance of the Court in executing the decree; and, lastly, whether the application for execution made by Joykali can proceed.

2. Now, in respect of the rights of Srish Chunder, we are of opinion that, inasmuch as the Civil Court, by an order regularly passed u/s 232 before the Bengal Tenancy Act came into operation, permitted Koilash Chunder to execute the decree as one of the decree-holders, the Bengal Tenancy Act does not apply. The effect of this order, in our opinion, is to substitute Koilash Chunder as a

decree-holder in the place of Srish Chunder, the original decree-holder, and after that order was made u/s 232 it is not for the Court executing the decree to consider any circumstances under which it was made. The application of Section 148(h) is not retrospective so as to affect that order. It contains rather a prohibition to the Courts to abstain from granting any application for execution of a decree for arrears obtained by a landlord which may be made by an assignee unless under exceptional circumstances. But the mere fact that any assignments were made before the Bengal Tenancy Act came into operation would not entitle the assignees to ask the Court of execution to recognize them now.

3. We are next of opinion that the application for execution now before us made by Joykali cannot proceed. We cannot find that that application was ever allowed u/s 231, and therefore we must take it that Joykali had no authority to execute the entire decree. As the matter is not before us we abstain from expressing any opinion whether Joykali and Koilash Chunder jointly or either of them separately, under permission given u/s 231, can execute the decree. The appeal is therefore dismissed. Each party to pay his own costs.