

(1869) 01 CAL CK 0028

In the Calcutta High Court

Case No : Miscellaneous Special Appeal No. 448 of 1868

Lachmipat Sing Roy Bahadur and Others

APPELLANT

Vs

Wahid Ali and Others

RESPONDENT

Date of Decision : 30-01-1869

Acts Referred:

Citation : (1869) 01 CAL CK 0028

Judgement

Hobhouse, J.—We think that the Court below was quite right in this base. The decree-holder obtained a decree on the 16th April 1859. He made his first application to execute it on the 28th December 1861, and, in the course of that application, the Court directed him to produce a certain certificate of heirship, and in default of his doing so, struck off the application on the 18th January 1862. No second application was made to execute the decree until the 13th August 1864.

2. The first Court and the lower Appellate Court have held, that there was no bond fide proceeding to enforce the decree taken between the 16th April 1859 and the 13th August 1864, and that, therefore, the decree was now incapable of execution.

3. In special appeal one single point has been taken before us, and it is to this effect, viz., that inasmuch as the proceeding of the 16th April 1859 was a proceeding before the Court, therefore, under certain rulings of this Court, it must be presumed to be a proceeding made in good faith, and it must be held to have been such while the judgment-debtor does not prove the fact of its having been made in bad faith. The decisions which have been quoted to us--*Tabbur Sing v. Motee Sing* (9 W.R., 443), *Teja Sing v. Rajnaryan Sing* (1 B.L.B. (A.C.) 62)--do not seem to us to be binding decisions on the point before us; they are simply decisions on other points containing obiter remarks made by one or two of the Judges, bearing to some extent on the point before us. Though, therefore, they are decisions containing remarks manifestly entitled to our respectful consideration, they are not decisions binding upon us. We have to look to the

terms of law and to any interpretation of that law made by binding decisions of this Court. Now, as we understand the law, Section 20,* Act XIV of 1859, and the leading case thereupon, viz., that of Ram Sahaya Sing v. Digan Sing (Case No. 778 of 1865, 11th September 1866), it seems to us that, when an application for execution is sued out by any judgment-creditor, he has to show, in the words of the law, that some proceeding, construed by the Full Bench to be some bond fide proceeding, shall have been taken by him to enforce within three years the decree, execution of which he asks for, because the question is one of jurisdiction; and as we understand the law and the ruling, there is no jurisdiction in any Court to allow process of execution to issue, unless, in the words of the law, some proceeding shall have been taken to enforce the decree. When, therefore, the judgment-debtor contends that no such proceeding has been taken out, it is clear that the Court cannot exercise jurisdiction to execute the decree unless it is shown that a proceeding, and a bond fide proceeding has been taken, and the contention that the judgment-debtor is to show that the application is not a bond fide proceeding, seems to us to have no weight, because the application is not a proceeding on the part of the Court, but simply a proceeding on the part of the judgment-creditor.

4. We cannot hold that an application proceeding from the judgment-creditor himself, made by him at his own option, in his own words, and at his own time, and behind the back of the judgment-debtor, is presumptively a bond fide proceeding. The appeal must be dismissed with costs.

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Time for enforcing execution of judgment, &c., of a Civil Court not established by Royal Charter.

Sec. 20:--No Process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree, or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force, within three years next preceding the application for such execution.