

(1874) 12 CAL CK 0006
In the Calcutta High Court
Case No : Special Appeal No. 76 of 1874

Maharaja Beerchunder Manick Bahadoor	APPELLANT
Vs	
Ramkishen Shaw and Another	RESPONDENT

Date of Decision : 21-12-1874

Acts Referred:

Citation : (1874) 12 CAL CK 0006

Judgement

Sir Richard Couch, Kt., C.J.—We are of opinion that the decree is admissible in evidence. The question of its value when admitted is to be determined by the lower Courts. The defendant has alleged that it was obtained fraudulently. It does not appear that he gave any evidence of this, and it will be for the Court to say whether there is any evidence in support of that allegation. The decree of the Officiating Judge must be reversed, and the suit must be remanded to him for rehearing. The costs will follow the result. The case decided by the Full Bench at Agra--Ramjeeawan Rai v. Deep Narain Rai Agra. H.C. Rep., F.B. Rul., 1866-67, 78--which was referred to by the pleader for the respondents, does not appear to us to be applicable.

(1) Before Mr. Justice Bayley and Mr. Justice Glover.

The 31st July 1868.

Ram Sunder Tewari (Plaintiff) v. Srimunt Dewasi and Other (Defendants).*

Evidence, Admissibility of--decree barred by Limitation.

A decree for rent in a suit under Act X of 1859 against the defendant, an intervenor, which has remained unexecuted for more than three years, is not a subsequent suit admissible in evidence to show that the defendant had not, during a period subsequent to the decree been in bona fide receipt of the rent.

Baboo Bhowanee Churn Dutt for the appellant

The respondents did not appear.

The following judgments were delivered:--

Bayley, J.--I am of opinion this appeal ought to be dismissed.

The chief contention in special appeal is that the lower Appellate Court has wrongly decided that the defendant is in actual receipt of the rents bona fide, inasmuch as by a decree of the 26th February 1862 the plaintiff's title was declared in a suit under Act X of 1859 at which time the defendant appeared as an intervener in that case, consequently no bona fides could exist in the actual receipt of rent by the defendant. It is also contended that another decree dated 6th September 1865, distinctly declares that the plaintiff held land in Surrakdihikumpore, and therefore the statement of the defendant to the contrary should have been considered as of no weight and this decree, the special appellant also urges, is further proof that the defendant's receipt of rent was not bona fide. The pleader also cited the cases of Hurronath Roy v. Prannath Roy Chowdhry; 7 W.R., 85 and Woomesh Chunder Dutt v. Bhugoban Chunder Roy 9 W.R., 305 in support of his contention

It is admitted before us, as in the Courts below, that the decree relied upon, of 26th February 1862, was not executed or enforced in any way what ever. It is also admitted that the three years' limitation prescribed by s. 92, Act X of 1859, expired on the 28th February 1865, and this suit was brought on the 11th April 1866.

In my opinion when a decree is not executed within the period allowed by law for execution, its operation ceases and it no longer remains a decree, unless revived by order of a competent Court. No such revival appears in this case. The lower Appellate Court was therefore right in thinking that the decree was no evidence against the fact of the defendant's having actually received the rents as required by the law (s. 77), that is, bona fide.

It is contended that the lower Appellate Court does not state in express terms that receipt of the rent was bona fide; but to my mind, looking to the inoperative decree of the plaintiff on one hand, and the actual receipt of rent by the defendant on the other, the lower Appellate Court substantially holds the receipt to be bona fide as contemplated by s. 77, Act X of 1859.

Referring to the two cases cited above, I have only to say that they only lay down what is an admitted rule of law, viz., that the receipt contemplated by s. 77 is not to be only actual but bona fide, and have no further bearing whatever on the present case.

With regard to the plea that, because the decree of 1866 laid down that the plaintiff had lands in Surrakdihikumpore, the defendant's receipt of rent was not bona fide or compatible with his allegation that there was no such land, I would only remark that I do not think the question of bona fides of receipt of rent can be decided in that view; because the one matter is independent of the other.

In this view I would dismiss the appeal but without costs, as the respondent does not appear.

Glover, J--I concur in dismissing the special appeal.

*Special Appeal, No. 2023 of 1867, against a decree of the Judicial Commissioner of Zilla Chota Nagpore, dated the 20th May 1867, affirming a decree of the Assistant Commissioner of that district, dated the 9th June 1866.