

(1869) 03 CAL CK 0039

In the Calcutta High Court

Case No : Miscellaneous Special Appeal No. 21 of 1869

Mahima Chandra Roy

APPELLANT

Vs

Pyari Mohan Chowdhry and Another

RESPONDENT

Date of Decision : 09-03-1869

Acts Referred:

Citation : (1869) 03 CAL CK 0039

Final Decision : Dismissed

Judgement

Hobhouse, J.—One Shama Sundari sued the judgment-debtor, who is the special appellant before us, for a certain sum of money, and got a decree in her own name on the 6th September 1862. The judgment-debtor appealed to the Judge and during the hearing of that appeal, one Ramkishor Chowdhry was made a co-respondent with Shama Sundari to the extent of an eight-anna share in the money decree. On the 28th May 1864, the Judge, after having made Ramkishor a co-respondent, and thereby a co-plaintiff in the case, dismissed the appeal, naming Ramkishor as one of the judgment-creditors in the decree. Thereupon Ramkishor and Shama Sundari took out a joint execution of this decree; but at a certain time Ramkishor died, and the property of the judgment-debtor was attached by Shama Sundari alone; and this property was about to be sold, when Shama Sundari, on the 6th Chaitra 1274, put in a petition to the effect that she had received the whole amount of the money due on the decree, and the execution proceedings were thereupon stayed.

2. On the 25th Aghran 1275, Pyari Mohan Chowdhry, as representative of Ramkishor Chowdhry, sued out execution of the decree to the extent of Ramkishor's eight-anna share in it.

3. The first Court considered that the decree had been satisfied by the payment made to Shama Sundari, and refused to allow Pyari Mohan to take out execution proceedings; hut the lower Appellate Court has held that payment to Shama Sundari was not a payment to Pyari Mohan, and has directed that Pyari Mohan be allowed to proceed of the execution of his decree.

4. The first objection taken in special appeal is that the Judge below was wrong in allowing the execution of Pyari Mohan to proceed, when no order had been passed by the Appellate Court giving to Ramkishor any share in the decretal amount.

5. This contention, however, is based on an error of fact; for it has been shown to us that Ramkishor was made a co-respondent, and thereby a co-plaintiff in the Appellate Court, and was entered in the decree of that Court as one of the judgment-creditors.

6. The two next objections go to the merits; and in them it is urged that, when the judgment-debtor had paid one of the judgment-creditors, viz., Shama Sundari, there was a sufficient legal satisfaction of the debt, being a payment to a person who was the so-called principal decree-holder. The decree was in the names of Shama Sundari and Ramkishor jointly, and the payment should have been made to them, either jointly or to each of them to the extent of their admitted shares. Now, here it appears, that there was an admitted share; Ramkishor being admittedly entitled to an eight-anna share of the money decree, and Shama Sundari to the other eight annas. If, therefore, it is a fact that the judgment-debtor paid the whole sixteen annas of the decree to Shama Sundari alone, that will not be a sufficient release for the eight annas admittedly due to Ramkishor, and, therefore, to his heir Pyari Mohan. We think, then, that the judgment of the lower Appellate Court was good in law, and we dismiss this special appeal with costs.