

(1912) 06 CAL CK 0018
In the Calcutta High Court

Mirza Ahamed Ali Khan

APPELLANT

Vs

Nabin Chandra Tarkaratna Bhattacharjee and Others

RESPONDENT

Date of Decision : 06-06-1912

Acts Referred:

Citation : 16 Ind. Cas. 385

Hon'ble Judges : Stephen, J;Richardson, J

Bench : Division Bench

Judgement

1. In 1902, the opposite party obtained a decree for money against Mirza Mahomed Based, the petitioner's father, who subsequently died. The petitioner was brought on the record in place of his father in proceedings for the execution of the decree which were commenced in the year 1910. In the course of those proceedings two properties were attached as part of his father's estate which had descended to the petitioner. The petitioner objected to the attachment and set up an independent title to the properties. The first Court (the Court of the Munsif), on the both September 1911, allowed the objection and withdrew the attachment. Then the opposite party appealed to the District Court and on the 5th February 1912, the appeal was allowed in respect of one of the properties and dismissed as regards the other.

2. The point, which arises upon this Rule, is whether the appeal to the District Court was competent, and it comes to this whether in allowing the petitioner's objection, the Munsif did or did not determine a question -within Section 47 of the Civil Procedure Code, If the question was within the section, the determination was a decree within the definition in Section 2, and an appeal lay, therefore, u/s 96. If the question was not within Section 47, then the Munsif must be taken to have acted under Order XXI, Rule 58, and the following rules, and his determination was an order under Rule 60 and consequently conclusive, subject to the result of any separate suit which the opposite party might think fit to bring for the purpose of contesting the correctness of the order (Rule 63).

3. The case of Panchanun Bundopudhya v. Rabia Bibi 17 C. 711 is an authority

for saying that the Munsif's decision was one u/s 47. In that, case, while a decree under a mortgage bond was under execution, the mortgagor died; farther proceedings were continued against his widow, and she took the objection that some property that was attached had been sold to her after the decree and before attachment. It is admitted that on these facts, there is no distinction to be drawn between that case and this, and that, if that case stood alone, there would be no question of our being bound by the decision as it is that of a Full Bench. It is, however, suggested that the principle of that decision is inconsistent with that, laid down by another Full Bench of this Court in Karuck Chandra Ghosh v. Ashutosh Dhara 12 Ind. Cas. 163 : 39 C. 298 : 16 C.W.N. 26 : 14 C.L.J. 425. In that case, the facts were that A. in the execution of a decree for money against B. personally, attached and proceeded to sell properties of which B. alleged he was in possession, not in his own right, but as a shebait of a deity to whom the properties had been dedicated; and it was held that the question raised fell within the scope of Sections 278, 280 of the old Code and not Section 244, The decision in Panchanun v. Babia Bibi 17 C. 711, was specially noticed, and the Court said of it "The decision...is by a Full Bench of this Court and is binding till it is overruled by a Special Bench. It does not, however, decide the question now in controversy, but merely deals with the converse question." This concludes the question whether the one decision is inconsistent with the other, and leaves us no choice but to follow the first.

4. The Rule, therefore, is discharged with costs, which we asses at 5 gold mohurs.