

(1888) 06 CAL CK 0004
In the Calcutta High Court

Monmohini Dasi

APPELLANT

Vs

Durga Churn Rai Chowdhry

RESPONDENT

Date of Decision : 18-06-1888

Acts Referred:

Citation : (1888) ILR (Cal) 771

Hon'ble Judges : Rampini, J;Pigot, J

Bench : Division Bench

Judgement

Pigot, J.—We do not think it necessary to call upon the learned Counsel for the respondent. We have already intimated that as to the question of fraud, the lower appellate Court was right upon the matters argued before it. A question of fraud, which might perhaps have been a substantial and serious one, viz., that u/s 53 of Transfer of Property Act, was not taken by the parties or by the Court in either of the Courts below; and, following the ordinary rule, we think ourselves unable to entertain it here, although it is raised in the first paragraph of the memorandum of appeal.

2. As to the second point, viz., the construction of Section 276, Code of Civil Procedure, we are driven to adopt the same rule as the Allahabad Court has done in the case of Ganga Din v. Khushali 7 A. 702. In truth, to reverse the decision of the lower appellate Court upon this point, it would be necessary to do that which the Legislature has abstained from doing, that is, to provide that a petition presented u/s 295 shall have the same effect as an attachment. To hold that claims u/s 295 are claims enforceable by attachment against which assignments made u/s 276 are void, would perhaps be carrying out the intention that may have been in the mind of the Legislature when the old Code, which did not provide for a rateable distribution, was suddenly modified by the introduction of that perfectly new principle. Unfortunately the sections of the Code relating to execution were not re-cast so as to be fully adapted to the new state of things, and it appears to us that in this respect Section 276 had not been successfully framed with the object of protecting rateable distribution amongst claimants u/s

295. We need say no more then express our concurrence in the decision in Ganga Din v. Khushali 7 A. 720 and that being so, we dismiss the appeal with costs.