

(1887) 03 CAL CK 0009
In the Calcutta High Court

Pat Dasi

APPELLANT

Vs

Sharup Chand Mala and Another

RESPONDENT

Date of Decision : 07-03-1887

Acts Referred:

Civil Procedure Code, 1882 — Section 258

Citation : (1887) ILR (Cal) 376

Hon'ble Judges : W. Comer Petheram, C.J.;Cunningham, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—This is a suit which is brought by a person to have it declared that the auction sale of his property made in execution of a decree is invalid, and that his possession of it is valid as against the auction-purchaser.

2. The facts of the case are that the decree was obtained against this plaintiff by one of the defendants for a certain sum of money; that after it had been obtained the present plaintiff satisfied the decree by payment, but he did not have the payment certified under the provisions of Section 258 of the Code of Civil Procedure; and that, notwithstanding such payment, the execution-creditor went on and put up the property for sale, and it was purchased by the other defendants in this suit. Under these circumstances the owner of the property, the person who paid the money and who now finds that his property has been sold behind his back, brings this suit for the purpose of having it declared that the sale is of no effect as against him ; and the only question is whether he can prove that payment otherwise than by a certificate u/s 258.

3. It is contended, on behalf of the purchaser, that this section prescribes the only mode in which such payment could be proved for any purpose whatever, in any suit whatever, and before any Court whatever; in other words, that the section alters the law of evidence on that point, and renders this transaction not provable in the ordinary way but only by that certificate.

4. It is true that the words of the section are of a kind that they may be

susceptible of that meaning, but it seems to us that if the legislature intended to make such a great change in the law as that would imply, they would have expressed it in words that would leave the matter free from all doubt, and inasmuch as the words of the section are ambiguous in this sense, that they are susceptible of the larger meaning and also susceptible of the meaning that the payment shall be proved in other ways than that prescribed in the section, we think that it is the duty of the Court to give them this meaning and not the larger meaning, which would have such an effect, and which would be a kind of legislation which one would not expect to find in the third clause of a section relating to execution proceedings.

5. Under these circumstances we are of opinion that it was competent to the plaintiff to prove this payment in the way he has proved it, and having proved it to the satisfaction of both the lower Courts it follows that the decree in the former suit was satisfied and was inoperative against the owner of the property, and therefore the plaintiff is entitled to a decree confirming him in possession as against the purchaser and declaring that the sale under this satisfied decree is void and of no effect.

6. Under these circumstances we decree this appeal with costs as against the defendant No. 2.