

(1896) 12 CAL CK 0027
In the Calcutta High Court

Rajah Pudmanund Singh

APPELLANT

Vs

Chundi Dat Jha and others

RESPONDENT

Date of Decision : 11-12-1896

Acts Referred:

Citation : (1896) 12 CAL CK 0027

Judgement

Sale, J.—This is an application for the attachment of certain Government Promissory Notes in the custody of the Bank of Bengal in execution of a decree of the Court of the Sub-Judge of Bhagulpur. In the operative part of the decree it is ordered and decreed that this suit be decreed in accordance with the terms of the petition of compromise as recited below by the defendants in favour of the plaintiffs.

2. From the decree itself it does not appear upon what grounds the plaintiffs claimed the properties in the suit, but this is sufficiently disclosed in the judgment of this Court, in its appellate jurisdiction, in an appeal against an order for the appointment of a Receiver which was made in this suit by the lower Court-- ILR 22 Cal., p. 460. It is there stated that the plaintiffs claimed the properties as having on the death of Amatanund Jha reverted to the family of the granter now represented by them, and as in fact vested in them by operation of law.

3. If so, it follows that the plaintiffs are in their own right entitled to the properties dealt with by the decree, which includes the Government Promissory Notes and cash in deposit with the Bank of Bengal "on account of Kamikhya Dai."

4. The rights of the plaintiffs to the properties in question being thus declared, the question is how possession may be obtained by them. They ask that attachment may issue either under sec. 259 or sec. 268 of the Code of Civil Procedure. Sec. 259 provides for the delivery of specific movable property in the possession of the judgment-debtor., This is shewn by the second paragraph which says that " if the judgment-debtor has not obeyed the decree," &c. That section, therefore, is inapplicable to a case when the property sought to be

attached is not in the possession of the judgment-debtor Sec. 268 provides for the attachment in execution of a money-decree of movable property belonging to the judgment-debtor in the possession of a third person. So also sec. 272, which is the only other section which has been referred to, applies to a case when the property of the judgment-debtor is deposited in, or is in the custody of, any Court or public officer. None of these sections, therefore, apply to a case where the property sought to be attached has been declared to belong to the plaintiffs and is not in the possession or power of the defendants. It is clear, however, that the plaintiffs, having been declared by a decree of a Court of competent jurisdiction to be entitled to the Government Promissory Notes and cash in deposit in the Bank of Bengal "on account of Kamikhya Dai," have the right to immediate possession of this property, and if it is necessary to enforce this right, the only course, open to the plaintiff is, in my opinion, to proceed against the Bank by suit.