
(1896) 01 CAL CK 0015
In the Calcutta High Court

Rudra Narain Guria

APPELLANT

Vs

Pachu Maity

RESPONDENT

Date of Decision : 02-01-1896

Acts Referred:

Citation : (1896) ILR (Cal) 437

Hon'ble Judges : Gordon, J;Banerjee, J

Bench : Division Bench

Judgement

Banerjee and Gordon, JJ.—The only question that arises in this case is whether the application of the decree-holder, the appellant before us, for execution of his decree is barred by limitation.

2. The Courts below have held that the application is barred, and the Lower Appellate Court bases its judgment chiefly upon the case of Raghunandun Pershad v. Bhugoo Lal ILR 17 Cal. 268.

3. Now the ground upon which the decree-holder claims exemption from the operation of the law of limitation is this, namely, that the order of the Court allowing the claim of certain parties in respect of the properties which he now asks the Court to attach and sell in execution of his decree, operated as a (sic) bar to the execution proceeding to attachment and sale of those (sic); that it was not until after the removal of that bar by the decision civil suit which he was obliged to institute that he was placed in a (sic)to proceed with the execution; and that his present application, which was made subsequent to the removal of the bar, ought to be treated as a continuation of his former application which admittedly was in time.

4. We are of opinion that the contention of the appellant is amply supported by the authority of decided cases of which we need only refer to Pyaroo Tuho-vildarinee v. Nazir Hossein 23 W.R. 183, Paras Ram v. Gardner ILR 1 Ail. 355 and Kalyanbliai Dipchand v. Ghanashamlal Jadunathji ILR 5 Bom. 29. The case relied upon in the judgment of the Lower Appellate Court is clearly distinguishable from

the present. There the property sought to be attached and sold in execution upon the subsequent application was that in respect of which no claim had been allowed and in respect of which therefore the decree-holder was quite competent to proceed with his execution notwithstanding the adverse order of the Court in regard to other properties as to which a claim had been allowed. That being so, we are of opinion that the Courts below were wrong in law in holding that execution was barred in this case, and we must therefore allow this appeal and send the case back in order that execution may proceed. The appellant is entitled to his costs.