

(1921) 04 AHC CK 0004
In the Allahabad High Court

Seth Roshan Lal

APPELLANT

Vs

Muhammad Mashkur Ali Khan and Another and Muhammad
Tahsin Ali Khan

RESPONDENT

Date of Decision : 27-04-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 63

Citation : AIR 1921 All 142(1) : 63 Ind. Cas. 909

Hon'ble Judges : Tudball, J; Sulaiman, J

Bench : Division Bench

Judgement

1. The simple facts of this case are as follows:

The appellant obtained a decree against a certain judgment debtor and on the 6th of January 1916 attached the property now in dispute. The decree obtained was one of a Civil Court. The plaintiffs-respondents obtained a decree against the same defendant in the Revenue Court for arrears of profits. While the Civil Court attachment was subsisting, the Revenue Court also attached the property in execution of the plaintiffs' decree, put the property to sale and it was purchased by the plaintiffs. The Civil Court decree has not yet been put into execution. The plaintiffs brought the suit out of which this appeal has arisen for a declaration that the property is their own and that, therefore, no longer be sold in execution of the Civil Court decree. The Court below, relying on the case of *Raghubar Dayal v. Banke Lal* 22 A. 182 : A.W.N. (1900) 37 : 9 IC 1152 has decreed the suit. The defendant appeals. The point taken before us is that since that ruling the definition of "decree" has been slightly altered in the Civil Procedure Code. The word "civil," which appeared in the old Code before the word "Court," has now vanished and there is simply the word "Court" without the adjective "civil." That, therefore, Section 63 contemplates all classes of Court, Civil or Revenue, and that where there are two attachments, the Court of the highest grade should carry out the execution or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached should

carry out the execution. It is admitted that it is impossible to say whether the Revenue Court or the Civil Court is superior in the pretext case. They are Courts which are totally different and entirely independent of each other. Reliance is placed upon the latter part of Section 63, than is, it is suggested that there is no difference in grade between such Courts and that, therefore, the Court under whose decree the property was first attached should carry out the execution. In the first place, it is impossible to compare the Courts in question. It is not possible to say whether or not there is a difference in grade for the simple reason that they are not graded with each other under any law, but it seems to us quite clear that the omission of the word "civil" from the old definition of "decree" has not altered the law in the slightest. The same difficulty remains as was set out in the judgment of this Court in the ruling mentioned above. Assuming that Section 63 applied as between the Civil and the Revenue Courts and that the two Courts had both attached the decree of the one Court would have to be transferred to the other Court for execution, so as to enable both the judgment-creditors to receive a rateable distribution of the assets. It has to be admitted that there is no procedure anywhere laid down under which the execution of a Ravenna Court decree can be transferred to a Civil Court, or vice versa. It is quite clear that Section 63 applies only as between Civil Courts, or where the section is extended to the Revenue Courts, it applies as between the Revenue Courts, of which there are several grades just as there are several grades in the Civil Courts. There is no provision of the law similar to Section 63 which would apply to Civil Courts and Revenue Courts. We must, therefore, dismiss this appeal. We follow the ruling mentioned above, from which this Court has never dissented since it was enunciated. The appeal fails and is dismissed with costs, including fees on the higher scale.