

(1910) 03 CAL CK 0048
In the Calcutta High Court

Shamsunder Saha and Others

APPELLANT

Vs

Anath Bandhu Saha and Others

RESPONDENT

Date of Decision : 18-03-1910

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 31(b)

Citation : 6 Ind. Cas. 97

Hon'ble Judges : Lawrence Jenkins, C.J.; Doss, J

Bench : Division Bench

Judgement

Lawrence Jenkins, C.J.—In this case a Rule has been issued on the opposite party to show cause why the order of the Munsif at Tangail, First Court, dated the 20th November 1909, should not be set aside or why such other order should not be passed as to this Court might seem fit and proper. The occasion of this rule was that a decree was passed in this Presidency Small Cause Court in March 1909 for a sum in excess of a thousand rupees. There was an application for transfer of the execution proceedings which resulted in their being transferred to the Munsif at Tangail, First Court. Certain orders were passed by that Munsif, and on the 20th of November, he made an order of release, and it is this order that is named in the Rule. Subsequently an exception being taken to the proceedings, the Munsif, on the 8th of January, made an order to the effect that the proceedings before him were without jurisdiction. Though the Rule only mentions the order of the 20th of November 1909, I notice that the application on which the Rule was granted referred to the orders generally, and I think we can fairly treat this application as though the order of the 8th of January—was called in question, so that what we have to decide is whether or not the Munsif had jurisdiction to entertain these execution proceedings. Now, his jurisdiction did not extend to suits in excess of a thousand rupees, so that if the matter had to be determined by the terms of the Code, then under the present Code as under the Code of 1882, the Munsif had not jurisdiction for the purposes of these execution proceedings. Nor do I think that jurisdiction was created by Clause (b) of Section 31 of the Presidency Small Cause Courts Act. This Act is Act XV of 1882; and was

passed on the same day as Act XIV of 1882 which was the CPC of that year and, I think it would be reading into the words of Section 31, Clause (b), a meaning of which they are not reasonably susceptible, when regard is had to the circumstances, if we were to hold that a Civil Court, which was not competent for the purposes of the Code, would be competent by reason of the provisions in this section. I think the fair meaning of Section 31, Clause (b), is that the Civil Court to which a decree may be sent for execution is the Civil Court competent to deal with it under the provisions of Act XIV of 1882 and so the Court which under the provisions of the present Code is also competent to deal with it. Therefore, I think the Munsif rightly held that he had no jurisdiction, and that being so not only will the order of the 10th of November 1909 be of no avail but the other orders must share the same fate, the order of the 8th of January 1910 being correct.

2. But then we have been asked to transfer this proceeding from the Court of the Munsif at Tangail to the Court of a Judge having jurisdiction in the matter. No rule has been granted which would invite our making any such order, so that in any case I should have felt slow to accede to this application. But apart from that, proceedings that were without jurisdiction were not proceedings that could be transferred under the provisions of the old Code and I think they are equally incapable of transfer under the new Code. The broad result of this is that the applicant has failed, and I think it would be meaningless for us to say that we make the Rule absolute so far as it relates to the order of the 20th November 1909, for that has already come to nothing. I think the proper order for us to make is to discharge the Rule with costs, hearing fee, three gold mohurs.

Doss J.

3. I agree.