

(1928) 01 CAL CK 0043
In the Calcutta High Court

Shiba Kumari Debi

APPELLANT

Vs

Mt. Daksha Bala Dassi Chowdhurani and Others

RESPONDENT

Date of Decision : 05-01-1928

Acts Referred:

Citation : AIR 1928 Cal 296 : 110 Ind. Cas. 49

Hon'ble Judges : Duval, J

Bench : Division Bench

Judgement

Duval, J.—This rule has been obtained in a Small Cause Court suit. It appears that the zamindars, now opposite parties 1 and 2, had under them opposite parties 3 to 9 as their patnidars. The spatni was sold for arrears of rent under the patni regulation on 17th December 1919, and was purchased by a third party. The zamindars took out their dues from the purchase-money and the balance remained in deposit. Thereafter, the present petitioner who held a money decree against opposite party 3 attached the surplus sale proceeds on 4th June 1920, and realized his dues in full under that attachment on 25th September 1920. Some of the darpatnidars, however, on 17th November 1920, that is to say, eleven months after the patni sale brought a suit to have the patni sale set aside. The suit was decreed by the Subordinate Judge of Nadia in January 1922 and that decree was confirmed by this Court. Under that decree, the zamindars, opposite parties 1 and 2 had to refund to the auction-purchaser the amount which the auction-purchaser had paid for the patni at the patni auction. Thereafter, the present Small Cause Court suit was brought by opposite parties 1 and 2, the zemindars, against the patnidars and the present petitioner to recover with interest Rs. 161 which the present petitioner had withdrawn by attachment under his money decree against opposite party 3. The Small Cause Court Judge has given the zamindars, opposite parties 1 and 2, a decree against the present petitioner only for Rs. 161 with interest and discharged the case as against the other opposite parties, the patnidars. A rule has been obtained as to why this decree should not toe set aside or varied.

2. Two points are taken by the present petitioner, the judgment-creditor of opposite party 3, one of the patnidars. The first is that his money decree is now barred and has been already satisfied. If he has now got to refund the money, he will never recover his decree for Rs. 161 from defendant 2 and he states that the plaintiffs may get a decree against opposite party 3 but that they should not get a decree against him. The second point raised is that the Small Cause Court suit was barred by limitation. I have heard the learned vakil for the petitioner. As to the first point : the matter, as was pointed out by the learned Small Cause Court Judge, is very similar to the case of Behari Lal Seal v. Bijoy Chand [1906] 38 C.L.J. 137 though in that case the surplus sale-proceeds were withdrawn by the patnidars during the pendency of a suit to set aside the patni sale. Here, the petitioner took the risk of withdrawing the money when the period of limitation for bringing a suit to set aside the sale had not yet expired. He, therefore, acted at his own risk and I am not prepared, therefore, to say that the decision of the Small Cause Court Judge is in this respect contrary to law. As to the second point, the learned Small Cause Court Judge held that Article 120, Lim. Act, would apply. It is urged on behalf of the petitioner that Article 62 would apply and so the suit is barred by limitation. In this connexion, I am referred to the case of Harihar Misser v. Syed Mohamed [1916] 20 C.W.N. 983 and it is urged that that case is an authority to show that Article 62 applies. To my mind, it is an authority to show that Article 62 does not apply, for the learned Judges there pointed out that the point to be decided when the question is whether Article 62 applies or not is for whose use did the party making the payment intend the money. Now, it cannot be said that the petitioner when he took the money or the Court when it handed over to him the money intended the money to be for the use of opposite parties 1 and 2. In this view, I cannot hold that Article 62 applies; the other articles mentioned in the lower Court have not been invoked before me. I must hold, therefore, that the learned Small Cause Court Judge has rightly fallen back on the residuary Article 120. The opposite parties 4 to 9 appear, but opposite party 3 does not. They maintain that they are entitled to their costs as they have been unnecessarily impleaded in this Court. They never had anything to do with the taking out of the money which was taken out as if it was the sole property of opposite party 3 who does not appear.

3. In the result, the rule is discharged with costs. I allow two sets of costs, one to opposite parties 1 and 2 and the other set to opposite parties 4 to 9, two gold mohurs in each case.