(1935) 08 CAL CK 0027

In the Calcutta High Court

Srimati Susumabala Dassee — APPELLANT

Vs

Purna Chunder Dey — RESPONDENT

Date of Decision : 27-08-1935

Acts Referred:

Citation : 164 Ind. Cas. 461

Hon'ble Judges : McNair, J

Bench : Single Bench

Judgement

McNair, J.—This is an application by the Receiver in Suit No. 410 of 1934 for payment of a sum of Rs. 1,133-14-0 with interest, at 6 per cent, per annum from August 1932 until realization, and for payment of the sum of Rs. 2,278-14-0 with interest at 6 percent, from June 15, 1933, for taxed costs and for payment to the applicant''s attorney and to the attorney for the guardian ad litem of their costs of the execution proceedings.

2. By an order of July 27, 1934, certain attached properties were directed to be sold for the recovery of the above-mentioned sums and for the cost of the execution proceedings. The sale was effected by the Sheriff who sent in a statement of amount deducting from the sale proceeds (1) the Sheriff''s poundage based on the total amount of the sale proceeds and (2) the charges of the Corporation of Calcutta for owner''s and occupier''s share of taxes.

3. The questions which are now before me for determination are:

(1) Whether the Sheriff is entitled to charge poundage upon the sum paid to the execution creditor or upon the amount realised by the sale, and,

(2) Whether the arrears of taxes should or should not be set out in the sale proclamation on a sale by the Sheriff.

4. I am informed that the practice has been for the Sheriff to charge poundage upon the amount realised by the sale and not upon the amount paid to the execution creditor.

5. The practice appears to me to be wrong.

6. Chapter XXXVI, Rule 77, item No. 22 of the Original Side Rules and Orders grants to the Sheriff poundage on sums levied in execution, or, in the event of the claim being satisfied, compromised or settled, upon the amount of such satisfaction, compromise or settlement.

7. This rule was discussed by Sir George Rankin, C. J, in Pickford v. Janki Nath Roy 26 CWN 673 : 70 Ind. Cas. 488 Page of 26 C. W. N.--[Ed.], where the learned Chief Justice said:

The wording of the rule begins by granting to the Sheriff poundage on sums levied by the Sheriff in execution. So far it is doing exactly what was done by the statute 29 Eliz., Ch. 4 and it is keeping the old name for the old charge. It is maintaining also the principle of the old charge, viz., that it is to be a payment upon result.

8. The ratio of that decision turned upon whether the Sheriff''s poundage was payable when a claim was paid on a compromise after an attachment before judgment, but the words which I have quoted from the judgment show that the basis of the Sheriff''s charge is a payment upon results and that the rule in these Courts is founded on the English statute. The interpretation of the rule in England is set out in Edwards on Execution, p. 158 as follows:

The poundage is not calculated on the sum which the Sheriff is directed to levy, nor upon the sum realised by the sale, but upon the amounts paid to the execution-creditor as the proceeds of the execution.

9. In Evans v. Manero (1840) 7 M& W 463 where the Sheriff claimed poundage on the whole sum marked on the writ which was inaccurate, it was held that he was only entitled to poundage on the smaller amount which was really due.

10. In R. v. Robinso (1835) 3 Cr.M & R 334 : 1 Gal 209 : 5 Tyr. 1095 : 4 Dowl PC 447 the Crown obtained judgment for penalties amounting to ? 1,000 under the Excise Laws and the Sheriff seized the defendants goods valued at ? 824. The excise authorities ultimately agreed to take ? 500 in satisfaction of the penalties and it was held that the Sheriff was entitled to poundage only on ? 500. Baron Alderson in his judgment said:

That very proposition on which the Sheriff is entitled to poundage at all shows that he is not entitled to more than the sum actually received.

11. These authorities appear to me to lay down clearly that the Sheriff is entitled to poundage, not on the amount realised by the sale, but upon the sum payable to or received by the execution creditor as the result of the levy and it must be so calculated in the present instance.

12. The other question is as to the propriety of the deduction by the Sheriff of Municipal taxes. The practice, so I understand, is that arrears of taxes are not mentioned in the sale proclamation unless they are notified by the Corporation or

disclosed at the time the sale proclamation is settled.

13. In my view the Sheriff is entitled to make this deduction, and I am also of opinion that any arrears of taxes should be mentioned in the sale proclamation.

14. Order XXI, Rule 66, of the Civil Procedure Code, which deals with proclamations in execution sales provides that the proclamation shall specify (e) any encumbrance to which the property is liable, and arrears of rates are under the Calcutta Municipal Act a statutory charge on the premises. It is the duty of the party having the carriage of the proceedings to find out any arrears and to have them mentioned in the proclamation.

15. This matter was dealt with, so far as a sale by the Registrar is concerned, in the case of Bibhuti Bhusan Mozumdar Vs. Majibar Rahaman and Others, and it is desirable that the same practice should be observed in sales by the Sheriff.