
(1870) 03 CAL CK 0005

In the Calcutta High Court

Case No : Miscellaneous Regular Appeal No. 6 of 1870

Srinath Mazumdar

APPELLANT

Vs

Braja Nath Mazumdar

RESPONDENT

Date of Decision : 31-03-1870

Acts Referred:

Citation : (1870) 03 CAL CK 0005

Judgement

C.P. Hobhouse, J.—The plaintiff in this case sued to recover possession of certain lands and of certain moveable properties or the value of such moveable properties. On the 24th April 1866, he got a decree as well for the lands as for the moveable properties. Both parties rested content with this decree so far as regards the lands, but as regards the moveable properties the defendant appealed to the High Court. No question was raised before the High Court in the matter of the land, neither was the decree of the first Court in such matter at all events sought to be disturbed. On the 6th March 1869 the High Court gave a modified decree as regards the moveables. On the 26th April 1869 the decree-holder, the appellant before us, applied for the first time to execute the decree so far as regards the taking possession of the land decreed to him. But the Court below baa held that execution of this part of the decree is barred by the application of the Limitation Act, and the Judge refused to allow execution to proceed.

2. In appeal it is contended that the decree must be looked upon as one decree, and that therefore the real date of the decree is not the 24th April 1866, but the 6th March 1869, and that inasmuch as the decree-holder has proceeded within three years from the 6th March 1869, he is in time.

3. But we remark that the decree for possession of land was given on the 24th April 1866, and that there is no other decree in existence so far as regards the possession of land. The question therefore before us is, has any proceeding been taken either to enforce that decree for possession of land, or else to keep it in force within three years next preceding this present application of the 26th April

1869? It is admitted that no proceeding has been taken until this present time to enforce the decree in question. But it is contended that the appearance of the judgment-creditor in the High Court, in the proceeding which terminated on the 6th March 1869, is a proceeding to keep the decree of the 24th April 1866 in force. Now, the decree of the 24th April 1866 was for possession of land; the proceeding which terminated on the 6th March 1869 had admittedly no reference whatever to so much of the decree as referred to the possession of the land, it had reference only to so much of the decree as referred to the moveables it is obvious, therefore, that we cannot say that the proceeding which had for its object to keep the decree in force only in the matter of the moveables, could in any way be called or considered a proceeding which had for its object to keep the decree in force so far as regards the possession of the lands. The two matters contained in the decree of the 24th April 1866 are clearly distinguishable, and were distinguished. In the first matter, that is, in the matter of the possession of the land, the decree-holder has upon his own showing taken no proceeding at all until the time of this present application. In the other matter of the moveables, although he has taken a proceeding, yet this proceeding cannot obviously, by any stretch of the imagination even, be construed to be a proceeding in a matter to which it had no sort of reference whatever, namely, to the matter of the possession of the land. We think that the decree-holder has failed to show that he has taken any proceeding to keep the decree in force for the possession of the land within three years from the date of the decree, and that therefore he is out of Court. We dismiss the appeal with costs.