

(1914) 01 CAL CK 0041

In the Calcutta High Court

Case No : Appeal from Appellate Order No. 67 of 1912

Upendranath Sen Roy Chowdhury and Others

APPELLANT

Vs

Bimala Kanta Sen Chowdhury and Others

RESPONDENT

Date of Decision : 26-01-1914

Acts Referred:

Citation : (1914) 01 CAL CK 0041

Final Decision : Allowed

Judgement

Carnduff, J.—The question raised by this appeal is whether the provisions of sec. 48 of the Court of Wards Act, 1879 (Bengal Act IX of 1879), control the provisions of the CPC as to the attachment and sale of property in execution of decrees. The Court of first instance held that they did not ; the lower Appellate Court has taken the contrary view. Sec. 48 of the Act of 1879 provides that all moneys received by the manager of an estate in the hands of the Court of Wards shall be applied to certain specified purposes, and that priority shall be given to the purposes included in Class I over those included in Class II, and so forth. Class I includes the payment of all charges necessary for the maintenance, education and religious observances of the ward and his family, for the management and supervision of the ward's property and for the discharge of the Government revenue and other public demands. Class II includes, first, the payment of all rents, cesses and other demands due to any superior landlord in respect of any land held on behalf of the ward, and, secondly, the liquidation of debts payable by the ward.

2. The view of the learned District Judge is that the words "debts payable by the ward" include decretal debts, and that, therefore, where property in the hands of a manager is attached in execution of a decree, the manager is bound nevertheless to pay the other charges referred to above before he satisfies the decree.

3. In my opinion, this view cannot be maintained. One has only to look to the provisions of, for example, secs. 23, 23A, 24 and 60A of the Act to infer that the

Legislature had no such intention. The learned District Judge has referred to sec. 60A as supporting his view. That section provides that no property which is or has been under the charge of the Court of Wards, shall be liable at any time, except with the leave of the Court, to be taken in execution of a decree made in respect of any contract entered into by the ward without the leave of the Court while his property was under such charge. The inference which I draw from this is that the Legislature did not intend to interfere with the execution of decrees in any cases other than those specified. The other sections, to which I have referred, seem likewise to show that it was not contemplated that the provisions of the general law should be overridden in this connection.

4. I would, therefore, allow this appeal with costs, discharge the order of the learned District Judge and restore that of the first Court. I would assess the costs at two gold mohurs.

Richardson, J.

5. I agree. So far as I can see, all that sec. 48 of the Court of Wards Act does is to lay down instructions for the guidance of the manager in the due course of management and as to the order in which the ward's liabilities are to be satisfied out of the free funds at the manager's disposal. We have been shown nothing in the Act at all similar to the provisions, for instance, contained in sec. 3 of the Chota Nagpur Encumbered Estates Act. The execution of decrees, obtained against the ward before his estate comes under the management of the Court of Wards, is not barred, and sec. 51 of the Court of Wards Act shows that after the estate is taken over, the ward can both sue and be sued, subject to his being properly represented. The provisions in secs. 60 and 60A do not meet the present case, and apart from those provisions, our attention was drawn to nothing in the Act to prevent a decree against a ward from being executed under the general law like any other decree obtained by a creditor against a debtor. The learned Government Pleader has been unable to produce any authority for the view for which he contended. If that was the right view of the effect of sec. 48, I should certainly have expected that some authority would be forthcoming to support it. I agree that the appeal should be allowed.