SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

In Re: Jagjivan Nanabhai

In Re: Jagjivan Nanabhai

SooperKanoon Citation : sooperkanoon.com/327104

Court : Mumbai

Decided On : Jan-19-1876

Reported in : (1877)ILR1Bom82

Judge : West and ;Nanabhai haridas, JJ.

Appellant : In Re: Jagjivan Nanabhai

Judgement :

West, J.

1. In arrest of those proceedings (the criminal proceedings), which are now pending, Jagjivan applies to us and urges, inter alia, that the proceedings before the Subordinate Judge of Thana were coram non judice, he having no authority to attach and sell immoveable property in execution of the decree of the Bombay Court of Small Causes, which itself could proceed against moveable property only. It was argued by Mr. Branson on his behalf that Section 287 of the Code of Civil Procedure did not give to the Subordinate Judge greater power in execution matters than the Court which passed the decree.

2. We cannot say why, when the Legislature enacted Section 287 of the Civil Procedure Code, it allowed Section 78 of the Presidency Small Cause Court Act IX of 1850 to stand. Looking, however, to the wording of the former enactment, we find that it runs as follows: 'The copy of any decree, or of any order for execution, when filed in the Court to which it shall have been transmitted for the purpose of

being executed as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such Court.' Section 78 of Act IX of 1850 runs thus: 'Whenever any defendant, against whom judgment shall have been given in the Court of Small Causes, shall go, before execution thereof, out of the jurisdiction of the Court, the Judge of any zillah or town where he shall be found, upon receiving from the plaintiff, either in person or by vakil, an application in writing setting forth these facts, with a duly authenticated copy of the judgment of the Court, shall execute the said judgment in the manner prescribed by law for execution of his own decrees. 'There is a difference in the language of the two enactments, and the difference is significant. The former attaches the same effect to the decree of the Court which passed it as if it were the decree of the executing Court; the latter prescribes that the procedure in execution shall be the same, but this is not inconsistent perhaps with the execution's being limited by the nature of the decree. An exception may be imagined excluding particular species of property from being touched at all. This change of expression in the later law cannot be ascribed to mere carelessness or oversight; it is capable of being explained; and the intention of the Legislature is to be ascertained from the grammatical sense as applied to the object in view: Eastern Counties Railway Company v. Marriage (9 H.L. Ca., 32; S.C. 31 L.J. Exch.; 3 Jur. N.S., 53; 8 W.R., 748. The Bombay Court of Small Causes had no machinery to execute decrees against immoveable property; but the Legislature, having amply provided for it in the Code of Civil Procedure, might well have given to the Courts governed by the Code of Civil Procedure a power which it denied to the former Court. Section 284 of the Code enacts that a decree of any Civil Court within any part of the British territories in India which cannot be executed within the jurisdiction of the Court whose duty it is to execute the same, may be executed within the jurisdiction of any other Court in the following manner.' By this provision the Legislature has placed the entire machinery which it has constituted by the following sections at the disposal of every Civil Court within any part of the British territories in India, irrespective of its jurisdiction, except where special limitations are prescribed, as in Act XI of 1865, and it cannot be denied that the Bombay Court of Small Causes is such a Court as comes within the provisions of Section 284. The construction contended for of Section 287 cannot be put upon it without the addition of some such words as the

following.: But if such a decree or order shall be that of a Court of Small Causes, it shall have the same effect as if the executing Court were acting as a Small Causes Court.' We cannot, of course, make such an addition to the section when we find that the grammatical construction of its words, as they stand, is quite consistent with the general purpose of the Act.

3. The decree of the Small Cause Court in this case was referred for execution by the District to the Subordinate Judge, and this was perfectly legal under the concluding clause of Section 287.

4. The District Judge was, therefore, quite within his province in giving his sanction to the prosecution of the applicant who, he as well as the Subordinate Judge thought, had committed perjury and forgery before the latter. With the exercise of his discretion on the merits of the case we do not interfere. The application must be rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com