

MohsIn Ali Vs. Masum Ali

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Court : Allahabad

Decided On : Jul-13-1911

Reported in : (1912)ILR34All20

Judge : George Knox and ;Piggott, JJ.;

Appellant : MohsIn Ali

Respondent : Masum Ali

Judgement :

George Knox and Piggott, JJ.

1. This is a second appeal in an execution case arising out of a decree passed on the 8th of June, 1891. The question to be decided is whether the application for execu-out of which this appeal arises is or is not barred by the provisions of Section 48 of the Code of Civil Procedure. We find that in the year 1906 there was an application for execution by arrest of the judgment-debtor, in connection with which the dispute between the parties was carried up to this Court in second appeal. The finding of the Additional Subordinate Judge in his judgment, dated the 6th June, 1907, which was affirmed by this Court on appeal, was to the effect that that application was not barred by the provisions of Section 48 aforesaid, because the Judgment-debtor had by fraud prevented execution of the decree at various times within twelve years immediately before the date of the application then in question. Those dates are set forth in the Judgment itself, and the last date there

given is the 10th of June, 1904, when a warrant for arrest of this Judgment-debtor was applied for, and the finding is that the Judgment-debtor was guilty of fraud in that he successfully evaded arrest. We are of opinion that upon a correct interpretation of Clause 2 of Section 48 of the Code of Civil Procedure, the effect of the proviso embodied in that clause is that the bar to execution created by the first clause of the same section is removed for a period of twelve years from any date on which it is held that the Judgment-debtor has by fraud prevented the execution of the decree. We have been referred to a ruling to the contrary in the case of Sreenath Gooho v. Yusoof Khan (1881) I.L.R. 7 Calc 556. But it seems to us that the learned Judge who decided that case has not given due effect to the words ' Nothing in this section shall be deemed' at the beginning of Clause 2, Section 48 of the Code of Civil Procedure. We are, accordingly of opinion that this appeal must prevail and that the orders of both the courts below must be set aside and the learned Munsif directed to restore the application for execution to his file and endeavour to execute the warrant of arrest applied for by the decree-holder. If as the learned Judge seems to think, there is reason to suspect that the decree-holder has applied for this warrant of arrest without serious intent of getting it executed, it should be easy enough for the court to deal with such tactics on his part. The application has been dismissed merely on the ground that it is barred under the provisions of Section 48 of the Code of Civil Procedure and in that opinion we are unable to concur. The appellant will get his costs of these proceedings.