

Debi Dial Sahu Vs. Moharaj Singh

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SooperKanoon Citation : sooperkanoon.com/856732

Court : Kolkata

Decided On : May-06-1895

Reported in : (1895)ILR22Cal764

Judge : Prinsep and ;Ghose, JJ.

Appellant : Debi Dial Sahu

Respondent : Moharaj Singh

Judgement :

Prinsep and Ghose, JJ.

1. The decree in this case was passed by the Munsif of Daltongunj for money. An application was made by the decree-holder to have it sent for execution by the Munsif of Aurungabad by sale of immoveable properties within the jurisdiction of that Court. The Munsif of Daltongunj, in disregard of the last clause of Section 223 of the Code of Civil Procedure, sent this decree for execution direct to the Munsif of Aurungabad, instead of through the District Court of Gya. An objection was at once made by the judgment-debtor that, inasmuch as the authority of the District Court of Gya was wanting, the Munsif of Aurungabad was without jurisdiction. The Munsif disallowed this objection; but the District Judge on appeal held that it was fatal, and he accordingly disallowed the proceedings in execution. The decree-holder has appealed.

2. This point is not free from difficulty, for it involves the determination of, whether this was only an irregularity, or a matter affecting the jurisdiction of the Court of Aurungabad, After much consideration, however, we have come to the conclusion that the Munsif of Aurungabad had no jurisdiction without an express order of the District be passed under Section 226. The intention of the Legislature as expressed in Section 226 seems to have been to give the Court of the District in which it was desired to execute a decree which was passed by the Court of another District supreme authority in regard to the execution of that decree, and to provide that it is only by an order passed by the District Court that any subordinate Court in that district is empowered to proceed in such a matter. Section 226 directs that, after receipt of the necessary papers from the Court which passed the decree, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same. The District Court, no doubt, has jurisdiction over the entire District, and the Judge, therefore, has the option given to him of executing the decree himself, or, if he so thinks fit, of directing any subordinate Court to execute the same. Until such an order has been passed, we are of opinion that no subordinate Court has jurisdiction to execute such a decree. The appeal is, therefore, dismissed with costs.