

Atul Chandra Basu Vs. Arip Shaikh

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Court : Kolkata

Decided On : Dec-05-1921

Reported in : 65Ind.Cas.810

Judge : N.R. Chatterjea and ;Panton, JJ.

Appellant : Atul Chandra Basu

Respondent : Arip Shaikh

Judgement :

1. It is contended on behalf of the appellant in this case that the judgment-debtor is not entitled to raise the objection to the execution of the decree.
2. There is no doubt that the decree which has been obtained against the judgment-debtor is binding upon him and that in execution proceedings he cannot go behind the decree. But the objection raised by him was that the decree could not be executed under the special procedure prescribed by Chapter XIV of the Bengal Tenancy Act. It was competent to the judgment-debtor to raise such objection.
3. The decree, however, can be executed as a decree for money under the Civil Procedure Code and the right, title and interest of the judgment-debtor in the lands can be put up to sale. The judgment-debtor cannot object to such a course being adopted.

4. We think, in these circumstances, that the order of the Court below, in so far as it dismissed the application for execution entirely, should be set aside and the case sent back to the Court of first instance in order that the decree-holder may make an application for amendment of the application for execution of the decree by praying for attachment and sale of the right, title and interest of the judgment-debtor as under a decree for money, and upon this being done, the Court will proceed to execute the decree in the ordinary course of law. This, however must be on terms.

5. We accordingly direct that, upon the decree-holder paying to the judgment-debtor costs of both the lower Courts and of this Court--the costs of this Court being assessed at one gold mohur--within a fortnight of the arrival of this order in the Court of first instance, the orders in the Courts below be set aside, the application for execution amended, and the decree executed according to law.

6. If the above costs are not paid within the time specified, the appeal will stand dismissed with costs.