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Court : Kolkata

Decided On : Aug-08-1899

Reported in : (1900)ILR27Cal272

Judge : Ghose and ;Hill, JJ.

Appellant : Bachu Koer

Respondent : Golab Chand

Judgement :

Ghose and Hill, JJ.

1. This is an appeal against an order of the Second Subordinate Judge of Sarun granting the application of the decree-holder for attachment and sale of certain properties belonging to the judgment-debtor.

2. The decree was in a mortgage suit, and it seems to have been made under the combined provisions, so to say, of Sections 88 and 90 of the Transfer of Property Act. The mortgaged properties belonging to the judgment-debtor were, in pursuance of the order of the Court which made the decree, sold on the 5th December 1898. Subsequently an order was made by the District Judge under Clause (2) of Section 13 of the Bengal and N.-W.P. and Assam Civil Courts Act (XII of 1887) under which order, as we may assume, that officer distributed amongst the several Subordinate Judges of the district the civil business arising in

that district. It is, however, stated (for we have not the order itself before us) that the District Judge assigned over to the Second Subordinate Judge of the district certain parganas, and to another Subordinate Judge certain other parganas lying within the same district, so as to define their respective jurisdictions; but we cannot conceive how such a division of jurisdiction could have been made, having regard to Clause (2) of Section 13 of Act XII of 1887. Subsequently, however, an application was made by the decree-holder, which was in March 1899, for the attachment and sale of certain properties which, as it is now stated before us, are situate within the local limits assigned to another Subordinate Judge not being the Second Subordinate Judge who had made the decree itself; and an objection was thereupon raised that the Second Subordinate Judge had no authority in law--in fact, no jurisdiction, to entertain and grant the application in question. The Second Subordinate Judge has, upon a consideration of the law and the various rulings on the subject, overruled the objection of the judgment-debtor and granted the application, and the present appeal is by the judgment-debtor.

3. We think, as already explained, that all that the District Judge could do, with reference to Clause (2) of Section 13 of Act XII of 1887, was to assign to each of the Subordinate Judges such civil business as was cognizable by the Subordinate Judge, subject to any general or special orders of the High Court as he may think fit; and so far as the local limits of the jurisdiction of any particular Subordinate Judge is concerned, it is provided for in Clause (1) of the same section which states: 'The Local Government may, by notification in the Official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act.' There is no question before us that the Second Subordinate Judge was appointed with the jurisdiction over the whole district, and therefore we do not see how his jurisdiction could have been limited, in the way as it is stated it was, by the order of the Judge under Clause (2) of Section 13 of Act XII of 1887. On the other hand, the decree having been made by the Second Subordinate Judge, he is the only officer who could entertain the application of the decree-holder and make an order in furtherance of the application. The application made by the decree-holder on the present occasion may perhaps be strictly regarded as one under Section 90 of the Transfer of Property Act but, as already stated, the decree was made under the combined provisions of Sections 88 and 90 of the Transfer of Property Act, and

therefore the application for execution of that decree could only be made to the Second Subordinate Judge.

4. In the view we have expressed we are fortified by the decision of this Court in the case of Kali Pado Mukerjee v. Dino Nath Mukerjee (1897) I.L.R., 25 Cal., 315, as also by the observations of this Court in the case of Jagernath Sahai v. Dip Rani Koer (1895) I.L.R., 22 Cal., 871 (874, 875). The particular passages from the latter case bearing upon this matter are to be found at pp. 874 and 875 of the report.

5. For these reasons we think that the order of the Subordinate Judge ought not to be interfered with in this appeal, and the appeal will accordingly be dismissed with costs.

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