

In Re: Sunder Dass

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Court : Kolkata

Decided On : Sep-08-1884

Reported in : (1885)ILR11Cal42

Judge : Richard Garth, C.J. and ;Beverley, J.

Appellant : In Re: Sunder Dass

Judgement :

ORDER

Richard Garth, C.J.

1. Upon the best consideration that we have been able to give to this case, we think that the rule should be discharged. We granted the rule, having regard to the fact that Section 295 of the Code introduced a novel procedure in execution cases, and that the point submitted to us had arisen, so far as we were aware, for the first time.

2. We have not had the advantage of hearing both sides; but having heard the learned pleader who obtained the rule, we think that it should be discharged.

3. The person on whose behalf he applied, claimed as a decree-holder to share in the proceeds of a sale, which had been made in execution of a decree obtained by another person. There were several decree-holders who claimed a share in those proceeds, and under these circumstances, the Court, under Section 295, is bound to divide the assets rateably amongst all the persons who hold decrees against the

same judgment-debtor, and who have not obtained satisfaction of their decrees.

4. The objection taken before the Court below against the decree-holder who obtained this rule, was, that his decree against the judgment-debtor was not a bona fide decree, and that he held it in fact in trust for the judgment-debtor; and, if that were true, and the claimants were to share in the distribution of the assets, the other decree-holders might, under the last clause but one of Section 295, recover back the money from him.

5. That clause runs thus: 'If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.'

6. Munshi Mahomed Yusuf has contended that this clause is in his favour. He says, that is the only way in which the question can be properly tried, whether his client is entitled to share in the assets or not, and that the Court below, in the execution case, had no right to go into the question. He contends that, so long as his client holds a decree against the judgment-debtor, which is unsatisfied (let that decree be ever so fraudulent) still the Court is bound to give effect to it, and to allow the decree-holder to share in the assets.

7. We cannot adopt that view. We think that the words 'decree-holders' or 'persons holding decrees for money against the same judgment-debtor' in Section 295 must mean bona fide decree-holders against the judgment-debtor; and if in point of fact the decree which the present applicant holds is a sham decree, we think that the Court has a right to enquire into the question, and to exclude him from the distribution of assets.

8. If this were not so, it is obvious that the section would give rise to a great deal of fraud, because any man, who is in difficulties, and likely to have executions issued against him by bona fide creditors, might always have a number of sham decrees in readiness against himself, to defeat the claim of any bona fide creditor who might put in an execution. As soon as the bona fide creditor put in his execution, and sold the property, these sham decree-holders, who would really represent the judgment-debtor, might come in, and completely sweep away all the assets from

the bona fide decree-holder.

8. But thereby says Munshi Mahomed Yusuf, if his client did improperly get hold of the assets, he might be made to disgorge them by a suit.

9. That is perfectly true; but, on the other hand, his client might ran away with the money, and it is not always easy to get back money out of the hands of a dishonest person. We think that a Court is bound to see, on occasions of this kind, when assets are to be distributed, whether the claimants are bond fide decree-holders within the meaning of the section; and even if the Court should decide in favour of the claimants, the last clause but one of Section 295 is intended to give the person or persons, who may be affected by that decision, the right to bring a regular suit to establish his or their rights.

10. We think, therefore, that the rule must be discharged.

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