

Dasarathi Ghose Vs. Kartick Ch. Ghose

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SooperKanoon Citation : sooperkanoon.com/872979

Court : Kolkata

Decided On : Jul-13-1926

Reported in : AIR1927Cal782

Appellant : Dasarathi Ghose

Respondent : Kartick Ch. Ghose

Judgement :

Mallik, J.

1. This rule was directed against an order passed by the subordinate judge of Hooghly setting aside an order passed by a Munsif, Serampore, whereby an application for execution of a small cause Court decree had been rejected. There had been a small cause Court decree passed and when an application for its execution was made, it was made to the second munsif of Serampore who in his capacity as a small cause Court judge had passed that small cause Court decree. In the application for execution it was stated that as the judgment-debtor had no moveable properties, action might be taken against his immovable properties. The officer before whom this application for execution was filed and who exercised two functions, one as a small cause Court judge and another as a munsif, rejected the application for execution on the ground of limitation. Against this order an appeal was filed before the subordinate judge and the subordinate judge, as stated above, allowed the appeal setting aside the order passed by the munsif.

2. The contention on behalf of the petitioner before us has been that the subordinate judge had no jurisdiction to entertain the appeal inasmuch as the order appealed against had been passed by a small cause Court judge, an order passed by a small cause Court judge being final in these matters.

3. On behalf of the opposite party it was said that the order passed by the munsif against which the appeal was preferred before the subordinate judge was not an order passed by a small cause Court judge but by a munsif in his ordinary regular capacity. We have looked into the records of the case, and from the records it appears that the application for execution was addressed to the munsif, second Court, Serampore, but it was accompanied by an affidavit wherein the munsif was described also as a small cause Court judge, and wherein a prayer was also made for the issue of a certificate. On behalf of the petitioner it was argued that this was not in accordance with the provisions about transfer of an application for execution or in accordance with the provisions as laid down in Order 21, Rule 6, Civil P.C. It is true that no specific order about transfer or sending the application for execution was passed by the munsif before whom the application was made, but taking the application along, with the affidavit we are of opinion that the provisions about transfer and of Order 21, Rule 6, were in effect complied with, and that being so, the order passed by the munsif rejecting the application for execution was, in our opinion, passed by him, not in his capacity as a small cause Court judge but by him as a munsif. In this view of the matter the learned subordinate judge, in our opinion, was justified in entertaining the appeal and we are unable to hold that when he set aside the order passed by the munsif he passed the order without any jurisdiction.

4. The result, therefore, is that the rule is discharged with costs, hearing-fee one gold mohur,

Panton, J.

5. I agree.