The Collector of Jessore Vs. Hurrish Chunder Roy

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Court : Kolkata

Decided On : Feb-16-1878

Reported in : (1878)ILR3Cal713

Judge : Ainslie and ;Morris, JJ.

Appellant : The Collector of Jessore

Respondent : Hurrish Chunder Roy

Judgement :

Ainslie, J.

1. A judgment in this case was delivered by us on the 8th of May last, but before it was signed it was objected by Baboo Annoda Persaud Banerjee, for the respondent, that the Court had fallen into a mistake as to the purport of the decree made by the Judge of 24-Pergunnahs on the 11th of March 1873. On examining that decree it appears to us that it was so. The case, therefore, must be disposed of on other grounds.

2. The object of the special appellant hero is to set aside the judgment of both the Courts below on the ground that it is inconsistent with the terms of Section 61 of Act VIII of 1869 (B.C.) which says that 'if after sale of any such wider-tenure in execution of decree any portion of the amount decreed remains due, process may be applied for and issued, against any other property, moveable or immoveable,

belonging to the debtor.' In this case the under-tenure, of which the arrear was decreed to be due, has not been sold. Therefore, in the words of the section, execution cannot proceed against any other immoveable property of the debtor. But it is contended that inasmuch as the tenure had been attached and subsequently released from attachment by an order of Court, and as execution therefore could not proceed against it, the judgment-creditor is clearly entitled to proceed against other immoveable property of the debtor.

3. In the first place it does not appear that the creditor has exhausted all the remedies open to him. On the order of the Subordinate Judge releasing the properly from attachment it was open to him by a regular suit to show that the property was really liable to be sold in execution of his decree. Besides, it appears to us that if we are to go into the question of the equity of the judgment-creditor, we must look at the whole of the facts. On the statement of facts put before us it seems to me, speaking for myself, perfectly clear that the judgment-creditor is not entitled to the equitable relief he seeks. (The learned Judge proceeded to go into the facts of the case, and continued.) Whatever may be the rights of a zemindar holding a decree for rent against one of his tenants in respect of the sale of the tenure on which the arrears have accrued, when such rights are put forward in opposition to the rights of third parties, it seems to me that it is impossible for any zemindar to put forward a claim under the Rent Law which shall take effect against his own acts done as in this case under the Code of Civil Procedure. It is sufficient to state the circumstances of the original sale to show that when nominal arrears are said to have accrued due from Hurrish Chunder, the appellant, on the tenure nominally sold to him, but previously sold to others; and when it is sought to seize and sell other property of Hurrish Chunder for such arrears, the whole proceedings are certainly tainted by want of equity. Therefore, when the zemindar comes here and asks us to give him an equitable relief against the distinct words of the Statute, it seems to me that his mouth is completely closed by reference to his own proceedings in 1869.

4. I would, therefore, reverse the judgments of both the Courts below with costs.

Morris, J.

5. I concur in thinking that no further execution as asked for, can be taken out.