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RAM KISSEN JOYDOYAL v. POORAN MULL.

MOOKERJEE J.

Railway Co. (1). It is not necessary for us to deal with these cases, because, as we have already pointed out, the authority of the Court to grant an injunction in the present case depends on the true construction of the provisions of the Specific Relief Act.

The result is that this appeal must be allowed and the suit dismissed. We direct that the plaintiffs respondents do pay to the defendants appellants the costs of this appeal as also the costs of hearing for two days in the trial Court.

FLETCHER J. I agree.

O M. *Appeal allowed.*

Attorneys for the appellants: *Pugh & Co.*

Attorneys for the respondents: *Fox & Mandal.*

(1) (1883) 11 Q. B. D. 30.

CIVIL RULE.

Before Sanderson C. J. and Walmsley J.

MAKHAN LAL SAHA

v.

SAROJENDRA NATH SAHA.*

1920

Feb. 12.

Sanction for Prosecution—Grant of sanction to prosecute for resistance to attachment of movables on evidence only of the executing peon—Other evidence called for by the Court but not heard when produced, notwithstanding previous summonses on witnesses and adjournments for their appearance—Delay in granting sanction—Criminal Procedure Code (Act V of 1898), s. 195.

The Court executing a decree has jurisdiction, if satisfied on the evidence, without cross-examination, solely of the peon, who was alleged to have been resisted in the attachment of moveables, that a *primâ facie* case had been made out, to sanction the prosecution of the persons

*Civil Rule No. 3 of 1920 against the order of J. Macnair, District Judge, Faridpur, dated Dec. 4, 1919.

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so resisting execution under s. 183 of the Penal Code, notwithstanding the fact that the Court had previously called for evidence from both parties, issued summonses on their witnesses, who were produced on the date of the hearing of the application for sanction, and adjourned the case several times for their appearance :

The High Court deprecated the dilatoriness in disposing of the application by the Court of first instance.

THE facts of the case were as follows. One Sarojendra Nath Saha and others, the opposite party, obtained a money decree against the petitioner, Makhan Lal Saha, and another named Nanda Lal Saha. In execution of the decree. Beni Madhub De, a Court peon, went to the spot accompanied by the decree-holders' men, on the 30th May 1919, and seized some movables belonging to the judgment-debtors. Thereupon, it was alleged, the latter and others assaulted the peon, released the attached property and intimidated the peon and the decree holders' party. The next day the peon submitted a report to the Munsif, and the decree-holders applied for sanction against the petitioners and others. The Munsif issued notices upon the latter to show cause why sanction should not be granted. The petitioners and others, in showing cause, submitted that the story of the seizure of property, assault and intimidation was a fabrication. The above objection was filed on the 28th June, and the case adjourned to the 26th July, both parties being directed to produce their evidence on such date. On this date the Munsif issued summonses on the witnesses of both parties and adjcurned the case to the 23rd August. The hearing was further postponed to the 15th November, and evidence called for. On the last mentioned date the petitioners' party appeared with their witnesses and applied to the Munsif for permission to cross-examine the peon. The Munsif refused to allow such cross-examination

and to hear any witness. Thereafter, on the 18th instant, he granted sanction to prosecute the petitioners and others under s. 183 of the Penal Code. The latter then filed an appeal before the District Judge of Faridpur who by his order, dated the 4th December, rejected the same. A Rule was granted by the High Court to set aside the sanction.

Babu Manmatha Nath Mookerjee, for the petitioners. The Munsif ought to have allowed the cross-examination of the peon, the only witness examined. Having regard to the fact that the case had been adjourned several times for the appearance of the witnesses and that they were present, he should have examined them.

Babu Dasarathy Sanyal (with him *Babu Satindra Nath Mookerjee* and *Babu Kamini Kumar Sarkar*), for the opposite party. This Court has no jurisdiction as the District Judge refused to revoke the sanction given by the Munsif. No elaborate enquiry was necessary if the Munsif considered that a *primâ facie* case was made out on the peon's evidence. Refers to *In re An Attorney* (1).

SANDERSON C. J. In this case a Rule was granted to the petitioners calling upon the District Magistrate and the opposite party to show cause why the present order should not be set aside, and the matter reconsidered by the Munsif, allowing the petitioners to cross-examine the peon and to produce the documents which they had already produced.

The matter arose in connection with an application by certain decree-holders for sanction to prosecute the judgment-debtors and certain other persons, who are alleged to have forcibly released certain properties that had been seized by a peon of

(1) (1913) I. L. R. 41 Calc. 446.

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the learned Munsif's Court, on the strength of a writ of attachment issued in a money execution case, and also to have assaulted the peon and criminally intimidated him and the decree-holders' men. The matter first came before the learned Munsif, according to the record which is now before us, on the 31st of May 1919, when he directed that a notice should be issued upon the opposite parties directing them to show cause, within a week of receiving the same, why they should not be criminally prosecuted. The matter was allowed to drag on until the 18th of November 1919, roughly speaking, about six months. At one time the learned Munsif apparently had made up his mind that he would hear the witnesses on both sides, and he adjourned the case from time to time in order that those witnesses might attend; but eventually, on the 18th of November 1919, he granted sanction, and he came to the conclusion that it was not necessary to hold an elaborate enquiry in connection with the application, and apparently the only witness who was examined before him was the peon. The learned Munsif came to the conclusion that a *primâ facie* case had been made out upon the evidence of the peon against the three petitioners: and he thereupon granted sanction to prosecute them. It, therefore, seems to me that he might have done within a week of the notice being served what he took six months to do. He might have examined the peon within a reasonably short time after the notice had been served, and if he had come to the conclusion then that the peon had made out a *primâ facie* case he might have granted sanction. He took six months to come to the same conclusion. On appeal the learned District Judge refused to revoke the sanction.

I desire to say that the facts connected with this application disclose a lamentable state of affairs.

That a simple application for sanction to prosecute the three petitioners, which, as I have already pointed out, was disposed of upon the evidence of one witness only, should take six months before a final conclusion is arrived at, is nothing short of lamentable, and I sincerely hope that such a thing will not come to my notice again.

It is unnecessary for me to deal with the question of jurisdiction which was raised by Mr. Sanyal on behalf of the opposite party, because, in my judgment, on the merits, this Rule ought to be discharged. In my judgment it was within the jurisdiction of the learned Munsif, if he was satisfied on the evidence of the peon that he had made out a *prima facie* case for the prosecution of the petitioners, to sanction the prosecution. The only thing to be complained of is that he ought to have done within a short time what he took nearly six months to do.

For these reasons, the Rule is discharged.

WALMSLEY J. I agree.

E. H. M. *Rule discharged.*