

Before Mr. Justice Prinsep and Mr. Justice Macpherson.

1884
August 8.

NUDDYAR CHAND SHAHA AND OTHERS (DECREE-HOLDERS) APPELLANTS v. GOBIND CHUNDER GUHA (JUDGMENT-DEBTOR) RESPONDENT.*

Decree, Evidence inadmissible to explain the terms of—Evidence—Execution proceedings.

When the terms of a decree are uncertain, it is not competent to the Court of execution to make any inquiries, by taking oral or documentary evidence, to ascertain the meaning of such terms.

THIS was an application for the execution of a decree passed by the High Court on the 20th December 1867. One of the objections taken by the judgment-debtor before the Court of execution (the Subordinate Judge) was that the decree was indistinct, inasmuch as it did not mention the names of the 12 tenures in respect of which the High Court had directed the apportionment of costs in the suit. The Subordinate Judge, however, was of opinion that the decree was quite clear, and that the tenures in question could be ascertained from it. With that view he proceeded to record a mass of evidence, oral and documentary, and, on the 23rd May 1882, allowed the decree-holders costs to the extent of Rs. 1,427-3 and interest thereon. On appeal, the District Judge remanded the proceedings for the trial of fresh issues, and ultimately, on the 5th January 1884, passed the following order:—"Recoverable from Gobind Chunder Guha, plaintiff (judgment-debtor), by the defendants (decree-holders) or their successors whose names are mentioned in column * * * the sum of Rs. 473-2-3." Against that order the decree-holders appealed to the High Court, and it was among other things contended on behalf of the judgment-debtor in cross appeal that the decree was indefinite, and therefore incapable of execution; and the lower Courts were wrong in admitting new evidence.

Babu *Durga Mohun Dass* and Babu *Bhobani Churn Dutt* for the appellants.

Babu *Troilokya Nath Mitter* for the respondent.

* Appeal from Appellate Order No. 117 of 1884, against the orders of J. F. Bradbury, Esq., Officiating Judge of Backergunj, dated the 14th of September 1883 and 5th of January 1884, reversing the order of Babu Bani Madhub Mitter, Subordinate Judge of that district, dated the 23rd of May 1882.

The judgment of the Court (PRINSEP and MACPHERSON, JJ.) was delivered by

PRINSEP, J.—The present appeal relates to the execution of a decree of this Court, dated the 20th December 1867, passed on an application for review of judgment. Under this decree certain costs were given to the parties in a manner to which reference will be presently made. Objections have been taken by the judgment-debtor, respondent, to the right of the decree-holder to execute the decree; and as these go to the root of the present proceedings, we have to consider them before we consider the case of the appellant.

In the first place, an objection is raised that the execution of the present decree is barred by limitation.

It appears that the first Court, in May 1881, held that execution was barred by limitation. But on appeal to the District Judge it was held, on the 14th June 1881, that execution could proceed; and the case was returned to the lower Court. Against that order no further appeal was made. It is now contended that it is not competent to the judgment-debtor to ask us to consider the question of limitation, his right to appeal against the judgment of the District Judge having ceased to exist. We find it unnecessary to determine this point, because, on another point, we think the execution cannot proceed.

The judgment-debtor, respondent, objects, that from the indefinite terms of the decree of the 20th December 1867, it cannot be executed.

The suit was brought by the judgment-debtor, respondent, to resume certain subordinate tenures, on the ground that they had become void in consequence of his purchase at a revenue sale of an *ousut* tenure within which they were contained. There were 73 defendants in that suit, out of whom only 36 contested the suit in the Court of first instance; and out of these 36, only 26 defendants appealed to the District Judge. In the appeal to this Court, in which the decree now under consideration was passed, only 23 defendants appealed. The result of that case was that certain tenures specified were declared to be void; and in this respect the plaintiff's case was decreed. The decree goes on to state: "It is further declared that so far as the case

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“relates to such portion of the howlah Kaloo Seal, and the eleven remaining tenures recorded as hereditary howlah and nim-howlah tenures at the first settlement, as concerns the special appellants, “the appeal is decreed”: that is to say, the plaintiff’s case was dismissed. “And it is ordered that the plaintiff, respondent, do pay to the defendants, appellants, in proportion to their respective interests in the claim against them; the costs incurred by them in this Court, to be ascertained by the lower Court by adding to Rs. 23-10 annas, as per details specified in the margin, the full amount of pleaders’ fees in special appeal No. 2290 of 1866, and one-fourth the amount of pleader’s fees in this review, and stamp for petition of appeal in proportion to the value of that portion of the 12 remaining tenures as to which this appeal is decreed, to be ascertained by the lower Court in execution.” The decree of the Court, therefore, left it uncertain what were the particular 11 remaining tenures to which the order referred. It also left it uncertain what were the exact shares in those tenures, which were held by the special appellants. And further it left it uncertain what the value of those shares was, so as to enable them to be taken into account as against the value of the entire claim made by the plaintiff in calculating the amount of costs due. It is true that the decree states that those 11 tenures were “recorded as hereditary howlah and nim-howlah tenures at the first settlement;” but the record of that settlement concerns 24 tenures. Therefore, on the face of the decree, there are no means of ascertaining to which 11 tenures it refers. We think, therefore, that inasmuch as it is uncertain to which 11 tenures the decree refers, the decree cannot be executed. It is not competent to the Court of execution to make any enquiries by taking oral and documentary evidence, as it has done, to ascertain the particular 11 tenures referred to. If it were necessary to offer any reason in support of this opinion, it would be sufficient to point to the protracted and elaborate enquiries which have taken place in the lower Courts, and the difference of opinion which has arisen, in ascertaining this particular point, to show how impossible it would be for a Court of execution to determine a matter of this description.

The appeal is therefore dismissed with costs.

Appeal dismissed.