

1876  
August 21.

APPELLATE CIVIL.

(*Mr. Justice Turner and Mr. Justice Spunkie.*)

MEGHRAJ (PLAINTIFF) v. ZAKIR HUSSAIN (DEPENDANT)\*.

*Act XVIII of 1850, s. 1—Jurisdiction—Good Faith.*

Under the provisions of s. 1, Act XVIII of 1850, no person acting judicially is liable for an act done or ordered to be done by him in the discharge of his judicial duty within the limits of his jurisdiction. In such a case the question whether he acted in good faith does not arise (1).

This was a suit in which the plaintiff claimed to recover damages from the Munsif of Meerut on the ground that he had acted contrary to law, and had postponed the sale in execution of a decree held by the plaintiff. The cause of action was stated in the plaint to have arisen on the 2nd August. In his written statement the plaintiff made allegations imputing that the defendant had not acted in good faith.

The Court of first instance dismissed the suit on the ground that the plaint disclosed no cause of action.

The plaintiff appealed to the High Court, contending that the Court of first instance should have tried and determined the question whether the defendant had acted in good faith.

Mr. Howard and Babu Jogendro Nath, for the appellant.

Mr. Mahanood, Mr. Conlan, Pandit Bishambar Nath, and Munshi Hanuman Parshad, for the respondent.

The judgment of the Court was as follows :—

The appellant obtained a decree in the Small Cause Court of Meerut for a sum of Rs. 61. The judgment-debtor having no

\* Regular Appeal, No. 34 of 1876, against a decree of the Judge of Meerut, dated the 10th April, 1876.

(1) See *The Collector of Hooghly v. Tarak Nath Mukhopadhyaya*, 7 B. L. R., 449; S. C. 16 W. R., 63; and *Pralhad Maharudra v. Watt*, 10 Bom. H. C. R., 346; in which cases, however, the pro-

tection to a judicial officer acting within his jurisdiction was rested not on Act XVIII of 1850, but on general principles of law.

1876

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 MEGHRAJ  
 v.  
 ZAKIR  
 HUSSAIN.

moveable property, the appellant obtained a certificate from the Small Cause Court and applied to the Munsif to execute the decree by attachment and sale of the judgment-debtor's rights and interests in a house. Orders were accordingly issued, but with the consent of the appellant or his pleader the sale was from time to time postponed. Eventually it was ordered the sale should take place on the 3rd August; but on the 2nd August the judgment-debtor again applied for a postponement, stating that negotiations were in progress for the sale of the house by private sale. The Munsif inquired of the decree-holder's pleader if it was probable the money to satisfy the decree would be raised, and on the pleader's stating that he thought it was probable, and apparently offering no opposition to the postponement, the sale was again put off to the 16th September. On that day the judgment-debtor brought into Court Rs. 50, and prayed for further delay. \* The decree-holder's pleader complained that the amount paid in was too small, but consented to the payment of the money, and did not press any objection to the postponement of the sale. Subsequently the sale took place, but it was set aside on the ground that it was held after the proper time of the day, and therefore no adequate price was offered for the property. These are the facts on which the appellant relies to establish his case.

Now it is enacted by Act XVIII of 1850 that no Judge or other officer therein mentioned shall be liable for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided he at the time in good faith believed himself to have jurisdiction to do or order the thing complained of.

It is clear the Munsif had jurisdiction, and therefore the question of good faith does not arise. He is protected from suit by the provisions of the Act, and although it is unnecessary to express any opinion on the point, we feel bound to say that, whether or not the Munsif was right in setting aside the sale on the ground urged before him, and whether or not he should have declined to grant the postponement of the sale on the 16th September, we have heard nothing which would support the suggestion (which was not made in the plaint) that he has not acted in good faith. We dismiss the appeal with costs.