

CALCUTTA HIGH COURT

Gobinda Chandra Pal

Vs

Dwarka Nath Pal

(Ghose and Caspersz, JJ.)

10.04.1906

JUDGMENT

Ghose and Caspersz, JJ.

1. The facts of this case are shortly these : In execution of a decree obtained by the decree-holder, a certain property belonging to the judgment-debtor was attached, and in due course it was sold. The sale, however, was subsequently set aside on the 24th September 1904. On the same date, the Court made the following order: "The sale having been set aside, the decree-holder is directed to take further steps for sale within three days hence. Put up on 28th September 1904 for orders." On the 28th September 1904, the date fixed, the following order appears to have been recorded: "No further steps taken, dismissed." The 28th September seems to have been the last date, when the Court sat before the Durga Puja vacation; and it was not till the 17th November 1904 that a petition was presented by the decree-holder asking for issue of proclamation for sale of the property, which had already been attached. The judgment-debtor, thereupon, appeared and objected upon the ground that he had paid to the decree-holder a certain portion of the decretal money. The matter was taken up on the 3rd January 1905, and the Court then made the following order: "There is no evidence of payment alleged in the petition of objection. As the former execution case was dismissed, the attachment ceased to exist by the dismissal of the case and no sale proclamation can issue without fresh attachment of the property. The decree-holder is, therefore, ordered to take necessary steps for attaching the properties on or before the date fixed for hearing." Or, in other words, what the Court held was that, because the former execution case had been dismissed, necessarily the attachment fell through, and the decree-holder could not bring to sale the property in question, without a fresh attachment being taken out. It is against this order that the decree-holder has appealed to this Court.

2. We are unable to agree with the Subordinate Judge in the view that he has expressed. It can hardly be laid down as a general proposition of law that, because an execution case has been dismissed by reason of no steps having been taken by the decree-holder, within a certain time limited, to bring the attached property to sale, the attachment that has already been put upon it necessarily falls through; and as explained by the Judicial Committee of the Privy Council in the case of *Raja Mohesh Narayan Singh v. Krishnanund Missir*¹ "it would be contrary to general principles and senseless addition to all the vexations of delay in the course of procedure to hold that, when for any reason, satisfactory or not, the execution of a final decree in a suit fails or is

set aside and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby and the further proceedings for the same purpose are to beconsidered as taken in a new suit." In this particular case, all that can be said, with reference to the order that was made by the Court on the 28th September 1904, is that the decree-holder not having taken any steps within the time limited for the purpose of bringing to sale the property which had been attached, nothing further could then be done, and that the execution must therefore discontinue. But it could never have been intended (and in a case like this it is always aquestion of intention) that all that had been done antecedent to the order in question by way of attachment for the purpose of bringing the property to sale must be taken to have fallen through, and that the decree-holder should begin again as if in a fresh execution case. We are, therefore, of opinion that the order of the Court below directing that the decree-holder must take out a fresh attachment cannot be supported. It will be set aside, and the record sent back to the lower Court with directions that, upon a proper application being made by the decree-holder for the sale of the property in question, the sale proclamation be issued. The appellant will get his costs from the respondent in both Courts.

Cases Referred.

1(1862) 9 M.I.A. 324, 337