

# CALCUTTA HIGH COURT

Bahir Das Pal

Vs.

Girish Chandra Pal

(Greaves and Ghose, JJ.)

16.02.1922

## JUDGMENT

**Greaves , J.**

1. This is an appeal by the defendants against a decision of the Additional District Judge affirming a decision of the Subordinate Judge. The respondent in the present appeal sometime ago, instituted a suit for declaration of his title to, and for possession of, the land included in the present execution case. Now the suit was compromised and a decree was passed and the present appellants took out execution in respect of that decree and certain plots were seized. The present respondent made an objection but on the 11th December 1915 when the objection was brought on, apparently what happened was that the present respondent said that he would not proceed with the case. We cannot find that there was any decision with regard to the objection or any actual determination on the point.

2. Three questions are urged before us on behalf of the appellants, firstly, it is stated that these proceedings are barred as the matter is res judicata by reason of the dismissal of the respondent's objection on the 11th December 1915. We think this point is not well founded having regard to the fact that there was no decision with regard to the objection and no actual determination thereon. Secondly, it is urged that under the provisions of Article 165 of the Indian Limitation Act the present proceedings, which have been treated as an application under Section 47, Civil Procedure Code, are barred. The learned Additional District Judge points out that Article 165 applies only to applications under Order 21, Rule 100 and with this view we agree. Then, thirdly, it is stated that the Executing Court has wrongly altered the decree with regard to a particular plot, Now it does not appear that this point was raised in the lower Appellate Court although it was raised in the First Court. But reading the judgment of the Subordinate Judge, it seems to us that all that he has done is to construe the decree and not in fact to alter it. This point accordingly fails and the appeal must stand dismissed.

3. A cross objection has been preferred on behalf of the respondents, and it is urged before us

that the learned Additional District Judge has not considered the cross-objection that was raised by the present respondents before him. But he does refer in his judgment to the cross-objection with regard to certain strip of land. Then he goes on to say: "very little has been said against this decision on the merits. The map prepared by the Commissioner and the facts set forth by the learned Subordinate Judge seem to me to be conclusive." Now, we think that there is no doubt that in this portion of his judgment he was dealing not only with the contentions raised by the present appellants but also with the cross-objection that was raised before him by the present respondent. This being so, although, he has only dismissed the appeal and has not expressly dismissed the cross-objection, we think that he did consider the cross-objection and came to a conclusion with regard to it.

4. The cross-objection accordingly fails.

5. We make no order as to costs.

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