

Hurro Soonderee Dossee Vs. Nilkunto Dey

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Court : Kolkata

Decided On : Jan-16-1878

Judge : L.S. Jackson and ;Cunningham, JJ.

Appellant : Hurro Soonderee Dossee

Respondent : Nilkunto Dey

Judgement :

L.S. Jackson, J.

1. The question which we have to determine in this case relates to the sufficiency or insufficiency of an attachment which the defendant, special appellant, had effected, and in respect of which he seeks to invalidate a mortgage set up by the plaintiff of certain rights which the other defendants, Nos. 1 and 2, had to receive in a specified amount from the Collector annually as compensation for their extinguished rights to certain lakhiraj land. The attachment was made under Section 237 of the repealed Code of Civil Procedure, and if that attachment was sufficient, then by Section 240 the mortgage made during the attachment was invalid, and the purchaser at the execution-sale would have acquired a right to receive such money free of any such mortgage. It is contended that it is an attachment duly made under Section 237, inasmuch as the property consisted of money in the hands of an officer of Government, which was or might become payable to the defendant or on his behalf, and that in such a case all that need be done for the purpose of attaching the property is to make a request to the officer in whose hands the money is, that the money may be held subject to the further order of the Court. It seems to me clear that an attachment of that kind is only good so far as it relates to any specific amount which may be set forth in the request as being then payable or likely to become payable to the defendant, and that that mode of attachment is not applicable to a right to receive money for ever, such as is in question in the present case. It may be doubtful whether, in the circumstances of this case, the attaching-creditor ought to have proceeded under Section 235 or under Section 236 of the Code. In either of these cases the defendant, the person to whom the money was payable, would be entitled to a notice, and it seems to me clear that this was a case in which the debtor ought to have had a notice that he was not at liberty to alienate his rights. All that we need decide, however, is whether Section 237 will govern the attachment of a right to receive money for ever. It appears to me that it will not. The decision of the Judge is, therefore, correct, and the special appeal must be dismissed with costs.