

# CALCUTTA HIGH COURT

Ananda Mohan Roy

Vs

Promotha Nath Ganguli

(N Chatterjea and Panton, JJ.)

27.02.1920

## JUDGMENT

**N Chatterjea, J.**

1. These appeals rise out of proceedings in execution of decrees under the following circumstances: One Chandra Nath Ganguli and his brother mortgaged certain properties to one Giridhari Lal Roy in 1907 together with all "rents, issues and profits" of the properties mortgaged. The mortgagee obtained a decree upon the mortgage in the original side of this Court, and in execution of the decree the properties hypothecated together with "all arrears of rent" were held on the 29th July 1916 and were conveyed to the appellants in this case by the Registrar of this Court by a conveyance, dated the 15th September 1916.

2. Before the purchase by the appellants, the mortgagors instituted rent suits against tenants holding leases under the properties hypothecated, and obtained decrees on the 15th September 1916, i.e., on the very day the appellants obtained their conveyance from the Registrar. The appellants there upon applied for execution of the decrees. The applications were opposed by the Gangulis, with the result that they were dismissed by the Courts below. The appellants are not the decree holders, though they have got a right to the arrears of rent for which the decrees were obtained by the Gangulis, and the question is whether they can execute the decrees although they did not get themselves substituted in the rent suits, which they could not do, as the decrees were passed on the very day they obtained their conveyance.

3. The Courts below in disallowing the applications have relied on the case of *Ramsahai v. Gaya*<sup>1</sup> and *Dost Muhammad v. Altaf Husain Khan*<sup>2</sup>

4. In the first case it was held that the holder of a decree enforcing a right of pre-emption, who subsequently to the date of the decree sells the property to a stranger and permits the latter to pay the purchase-money decreed into Court, does not by such conduct debar himself from obtaining

possession of the property in execution of the decree. Mahmood, J., observed: The case now before us is one in which the preemptor's right had already been established by a decree which had become final before the sale-deed of the 29th November 1883 was executed. The sale deed did not transfer the decree, but the property to the proprietary possession of which the preemptor-decree-holder was entitled, subject only to the payment of the purchase-money within time. It is not necessary for the purposes of this appeal to determine whether the sale-deed was valid. The question is one which, if it ever arises, can be finally determined only in a suit between the preemptor decree holder in and his vendee, Ambica Prosad. So long as the latter does not seek execution of the decrees, the matter cannot be regarded as a question relating to the execution of the decrees, such as would fall under the purview of Section 244 of the Civil Procedure Code."

5. It is to be observed that it was a decree in a suit for pre-emption which had already been passed before the sale-deed was executed; the vendee in that case did not seek to execute the decree, and the question arose only between the decree holder and the judgment debtor. In the second case decided by Chamier, J., in the Allahabad High Court the transferee of some immovable property pending a suit applied for execution of a compromise decree which was passed between the transferor and the judgment debtor subsequent to the transfer, although he did not get himself substituted in the suit in the place of the transferor. The transferee relied upon the provisions of Section 146 of the Civil Procedure Code in support of his right to execute the decree and it was held that he could not.

6. The cases relied upon, therefore, are distinguishable from the present case the facts of which are different.

7. Under Order XXI, Rule 16, the transferee of a decree "by assignment in writing or by operation of law" can apply for execution and the question is whether the appellants come within that description. In the present case there was no assignment of the decree for arrears of rent in so many words, but not only the property under which the jamas in arrears were included but also all the arrears of rents which were the subject matter of the rent suits were assigned to the appellants. The arrears of rent were nonetheless arrears though suits had been brought for them, and decrees were passed for them on the day the conveyance was executed, and we think that in these circumstances the appellants may be treated as assignees of the decree under Order XXI, Rule 16. In the case of *Purmanand das v. Vallabdas*<sup>3</sup>, one R. died leaving his property to his executors in trust for the appellant Purmanand Das and directed that the property should be assigned to the appellant as soon as he came of age. The executors then filed a suit against certain persons for recovery of certain loans made by them as executors. While the said suit was pending, the executors assigned all the property of their testator to the appellant. By the deed of assignment they assigned to him inter alia "all moveable property, debts, claims and things in action whatsoever vested in them as executors." No steps, however, were taken subsequently to the assignment to make the assignee (the appellant) a party to the suit. The appellant, claiming to be a transferee of the decree (which was obtained by the executors), applied for execution, and it

was held that he was a transferee of the decree within the meaning of Section 232 of the Code, that the decree had been transferred to him by "operation of law", and as such he was entitled to sue out execution. Sir Charles Sargent, Chief Justice, observed: "This assignment was made by the trustees to Purmanand Das in the most general terms in 1870 after the suit was filed and while it was still pending. By the deed of assignment the trustees transferred to Purmanand Das 'all moveable property, debts, claims and things in action whatsoever vested in them,' which would include the claim which was the subject-matter of the then pending suit; and the effect of this assignment was, in equity, to vest in Purmanand Das the whole interest in the decree which was afterwards obtained. But it has been suggested that Purmanand Das is not a transferee of the decree under Section 232 of the Civil Procedure Code, because the decree has not been transferred to him 'by assignment in writing or by operation of law;' and that, therefore, he is not entitled to apply for execution. There is no doubt that, in a Court of Equity, in England the decree would be regarded as assigned to Purmanand Das, and he would be allowed to proceed in execution in the name of the assignors. Here there is no distinction between law and equity, and by the expression by operation of law must be understood the operation of law as administered in these Courts. We think under the circumstances that we must hold that this decree has been transferred to Purmanand Das 'by operation of law.' In the present case the decree has been transferred by an assignment in writing as construed in these Courts. The appellant is, therefore, entitled to sue out execution and must be regarded as the representative of the original decree-holders within the meaning of Clause (c) of Section 244 of the Civil Procedure Code." We think the principle laid down in that case may apply to the present, and that the appellants should be allowed to come in under Order XXI, Rule 16, and execute the decree.

8. The orders of the Courts below are accordingly set aside, and the cases sent back to the Court of first instance in order that execution of the decrees may be proceeded with. We make no order as to costs of this appeal. The appellants, however, will be entitled to costs of the Courts below, only one set in each Court.

#### Cases Referred.

17 A. 107 : A.W.N. (1884) 224 : 4 Ind. Dec. (N.S.) 305

217 Ind. Cas. 512

311 B. 506 : 6 Ind Dec. (N.S.) 333