

APPELLATE CIVIL.

Before Mukerji and Mitter J.J.

BIJANBALA DATTA

v.

MATHURANATH SIKDAR.*

1930

Aug. 19.

Execution of decree—Rent-decree—Assignee—Bengal Tenancy Act (VIII of 1885), s. 148 (h).

A decree-holder, who is the assignee of a decree for arrears of rent but not of the interest of the landlord, who had obtained that decree, is not competent to execute that decree in view of section 148 (h) of the Bengal Tenancy Act.

The right to apply for execution of a decree for arrears is attached to the status of the decree-holder *qua* landlord.

Forbes v. Maharaj Bahadur Singh (1) referred to.

The plain words of this statute should be given their obvious meaning.

Soshi Bhusun Guha v. Goyan Chunder Shaha (2) and *Harinath Das v. Dengunath Chaudhuri* (3) approved of.

Koilash Chunder Roy v. Jodu Nath Roy (4), *Dwarka Nath Sen v. Pearl Mohan Sen* (5), *Dino Nath Dey v. Golap Mohini Dasi* (6), *Karuna Moyi Banerjee v. Surendra Nath Mookerjee* (7) and *Nagendra Nath Bose v. Bhuvan Mohan Chakravarti* (8) not followed.

APPEAL FROM APPELLATE ORDER by the decree-holder.

The facts of the case, out of which this appeal arose, appear in the judgment under report herein.

Anilendranath Ray Chaudhuri for the appellant.

Asitaranjan Ghosh for the respondent.

MUKERJI AND MITTER J.J. The decree-holder, who happens to be the assignee of a decree for arrears of rent, but not the assignee of the interest of the landlord who had obtained that decree, is the appellant in this appeal. She applied for execution of that decree, but the execution has been refused by

*Appeal from Appellate Order, No. 15 of 1930, against the order of A. E. Porter, District Judge of Bakharganj, dated September 9, 1929, affirming the order of N. Bagchi, Munsif of Pirojpur, dated July 9, 1929.

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| (1) (1914) I. L. R. 41 Calc. 926 ; | (4) (1887) I. L. R. 14 Calc. 380. |
| L. R. 41 I. A. 91. | (5) (1896) 1 C. W. N. 694. |
| (2) (1894) I. L. R. 22 Calc. 364. | (6) (1896) 1 C. W. N. 183. |
| (3) (1900) S. A. 2143 of 1898, decided | (7) (1898) I. L. R. 26 Calc. 176. |
| by Ali and Brett J.J. on | (8) (1901) 6 C. W. N. 91. |
| 25th May. | |

both the courts below on the ground that she is not competent in view of section 148 (*h*) of the Bengal Tenancy Act.

So far as this question is concerned it is well known that there is a considerable conflict of judicial opinion. In the case of *Manurattan Nath Das v. Hari Nath Das* (1), Mookerjee J. pointed out this conflict, but he did not decide the question. It would be convenient to quote his words in this connection. He said: "Upon a review of these "authorities, it is manifest that there is a conflict of "judicial opinion on the question and the cases of "*Koilash Chunder Roy v. Jodu Nath Roy* (2), "*Dwarka Nath Sen v. Peari Mohan Sen* (3), *Dino Nath Dey v. Golap Mohini Dasi* (4), *Karuna Moyi Banerjee v. Surendra Nath Mookerjee* (5) and "*Nagendra Nath Bose v. Bhuban Mohan Chakravarti* "(6) are authorities in support of a strict and literal "construction of section 148, clause (*h*) of the Bengal "Tenancy Act, while on the other hand, the cases of "*Soshi Bhusun Guha v. Gogan Chunder Shaha* (7) "and *Harinath Das v. Dengunath Chaudhuri* (8) "clearly support a liberal interpretation of this "provision of the law." Since that decision, there has been another decision of this Court, in which the earlier authorities were discussed and it was held by Richardson and Walmsley JJ. that clause (*h*) of section 148 of the Bengal Tenancy Act forbids the assignee of a decree for arrears of rent to make any application to execute the decree even as a simple decree for money under the Code of Civil Procedure. The learned Judges held that the language of section 148 (*h*) appears not to be altogether free from obscurity, but that there is a strong current of authority in favour of giving to the words of the statute their plain and obvious meaning. In the case

1930

Bijanbala
Datta

v.

Mathuranath
Sikdar.

(1) (1904) 1 C. L. J. 500, 512.

(2) (1887) I. L. R. 14 Calc. 380.

(3) (1896) 1 C. W. N. 694.

(4) (1896) 1 C. W. N. 183.

(5) (1898) I. L. R. 26 Calc. 176.

(6) (1901) 6 C. W. N. 91.

(7) (1894) I. L. R. 22 Calc. 364.

(8) (1900) S. A. 2143 of 1898,
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1930

*Bijanbala
Datta
v.
Mutharanath
Sikdar.*

of *Forbes v. Maharaj Bahadur Singh* (1), their Lordships of the Judicial Committee, while not particularly dealing with the question, did refer to section 148 (*h*) and express themselves with regard to the meaning of that clause in this way "A reference "to section 148 (*h*) clearly shows that the right to "apply for the execution of a decree for arrears was "attached to the status of the decree-holder *qua* "landlord. It declares that notwithstanding "anything contained in section 232, Civil Procedure "Code, *etc.*" We are of opinion that there is no reason whatsoever why the plain words of the statute should not be given their obvious meaning and we do not see our way to agree with those decisions, in which the learned Judges have purported to give what they considered a liberal interpretation to the words of the statute.

We think that the courts below have taken the correct view of this matter and we, accordingly, dismiss this appeal with costs. We assess the hearing fee at one gold mohur.

Appeal dismissed.

G. S.

(1) (1914) I. L. R. 41 Cal. 926; L. R. 41 I. A. 91.