

## APPELLATE CIVIL.

Before Rankin C. J. and Pearson J.

PRABASHINEE DEBI

v.

RASIKLAL BANERJI.\*

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May 12, 14.

*Decree—Execution of decree—Assignment of arrears of rent—Decree passed subsequent to assignment—Code of Civil Procedure (Act V of 1908), O. XXI, r. 16.*

The appellant, who was the assignee of a property with all arrears of rent, made an application to be permitted to execute, under Order XXI, rule 16, a decree passed subsequent to the assignment, in respect of such arrears of rent, in a suit by her assignor.

*Held that the appellant was not entitled to apply for execution under Order XXI, rule 16, of the Code of Civil Procedure.*

*Mathurapore Zamindari Co., Ltd. v. Bhasaram Mandal (1) followed.*

SECOND APPEAL by the decree-holder.

On the 15th January, 1927, Sreemati Prabashinee Debi, the appellant, took an assignment of two of the shareholders' interest in a property together with all arrears of rent in respect thereof. Prior to that, rent suits were filed by all the co-sharers and the decree, with which the present appeal is concerned, was passed on the 8th February, 1927, in one of such suits. On the 24th September, 1929, the said Sreemati Prabashinee Debi applied before the Munsif in the execution case for substitution in place of her assignors, who were unwilling to join the co-decree-holders. The Munsif refused the application as not coming under Order XXI, rule 16. On that, an appeal was preferred before the Subordinate Judge, who also dismissed the appeal.

Thereupon, this Second Appeal was filed in the High Court.

\*Appeal from Appellate Order, No. 171 of 1930, against the order of Rebatimohan Goswami, Subordinate Judge of Faridpur, dated Feb. 10, 1930, affirming the order of G. Palit, Second Munsif of Chikandi, dated Sep. 24, 1929.

(1) (1924) I. L. R. 51 Calc. 703.

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*Rupendrakumar Mitra* for the appellant.  
 No one appeared for the respondents.

*Cur. adv. vult.*

RANKIN C. J. The appellant in this case made an application under rule 16 of Order XXI, Code of Civil Procedure, to be permitted to put a decree in execution as an assignee of the decree-holder. It appears that, on the 15th of January, 1927, the appellant took an assignment from two persons of a certain property with a right to all arrears of rent. The landlords had by that time instituted suits for arrears of rent and the decree, with which we are concerned, is dated the 8th of February, 1927; so that the appellant's *kabálá*, which was on the 15th of January, 1927, was before the decree came into existence. In these circumstances, the question is whether she is entitled to apply under rule 16 of Order XXI of the Code.

Now, the decision of the Division Bench in the case of *Mathurapore Zamindary Co., Ltd. v. Bhasaram Mandal* (1), is a very careful decision upon this very question and it is against the appellant. The only question before us is whether there is any reason why that decision should not be followed. We have been referred to the case of *Ananda Mohon Roy v. Promotha Nath Ganguli* (2) decided by Mr. Justice Chatterjea and Mr. Justice Panton, where an assignment of the same day as the decree was held to come under rule 16. On the other hand, there can be no doubt that the decisions of other courts upon this rule have taken the same line as the decision of Mr. Justice Mukerji in the case of *Mathurapore Zamindary Co.* (1), to which I have referred. I find, for example, that, in the Bombay High Court, in the case of *Pandu Joti Kadam v. Savla Piraji Kate* (3), a person who had no title to the decree at the date of the application for execution and completed his title afterwards, was

(1) (1924) I. L. R. 51 Calc. 703.

(2) (1920) 25 C. W. N. 863.

(3) (1925) 27 Bom. L. R. 1109.

not allowed to execute the decree. At the time of the application for execution the position of the applicant in that case was this, that he had obtained a decree directing the decree-holder to assign the other decree to him. In spite of his having that decree in his favour, he was not allowed to take up the execution and continue it. Again, in the case of *Basroovittil Bhandari v. Ramachandra Kamthi* (1), it was held that "the word 'decree-holder' must be construed as "meaning decree-holder in fact and not as including "a party who in equity may afterwards become "entitled to the rights of the actual decree-holder." Where a plaintiff assigned the decree to be passed in his favour to another but the suit was allowed to proceed in the name of the assignor only, the assignee was not entitled to execute the decree as the transferee decree-holder within the meaning of section 232 of the old Code. If the rule be carefully considered, it will be noticed that the applicant must come under one or other of two classes. He must say that the decree was transferred to him either by an assignment in writing or by operation of law. It is reasonably clear to me that a case, such as the present, does not come under the phrase "by "operation of law" and I think Mr. Justice Mukerji's observations upon that question are convincing. Where the applicant is an assignee by operation of law, it is to be noticed that no notice need go to the assignor and that fact in itself seems to show that such a case as the present is not to be regarded as an assignment by operation of law. We have then to consider if he is a transferee by assignment in writing. Can it be said that the *kabâlâ* prior to the decree is to be regarded for this purpose as an assignment in writing of the decree? I do not think so. There seem to be two possible views of the rule. One view would be to say that there must be a decree in existence and a transfer in writing of that decree. That is the strict view—a

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view which the courts in India have taken. The only other possible view would be to say that, while other cases are within the rule—such as cases where a person claims to be entitled in equity under an agreement to the benefit of the decree—it is optional with the courts to give effect to the rule according as the case is a clear one or one which requires investigation of complicated facts or difficult questions of law unsuited for discussion on a mere execution application. In that view, if it were understood that the court had a complete discretion to apply the rule or not, it might be that the rule would be workable; but I do not think that any such discretion as that is intended to be given by the rule. Indeed, it is noticeable that, while the section at present runs “and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder”, the old Code contained certain additional words. It contained words “and, if that court thinks fit, the decree may be executed.” Now, those words have been deliberately left out in the Code of 1908 and I find it very difficult to think that any such discretion as I have referred to is intended under the new Code. In my judgment, the decision of Mr. Justice Mukerji in *Mathurapore Zamindary Co., Ltd. v. Bhasaram Mandal* (1) is sound and ought to be followed.

In this view, the appeal fails and must be dismissed.

PEARSON J. I agree.

*Appeal dismissed.*

N. G.

(1) (1924) I.L. R. 51 Cal. 703.