

## CIVIL REVISION.

Before S. K. Ghose and Lodge J J.

NANI GOPAL MUKHERJI

v.

SRISH CHANDRA NANDI.\*

*Execution—Decree for rent under the Bengal Tenancy Act—Jurisdiction of Small Cause Court—Code of Civil Procedure (Act V of 1908), ss. 7, 39, 42—Provincial Small Cause Courts Act (IX of 1887), s. 34; Sch. II, Art. 8.*

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Nov. 9.

The Small Cause Court has jurisdiction, within its pecuniary limits, and, subject to the provisions of s. 42 of the Code of Civil Procedure, to execute a decree for rent passed under the Bengal Tenancy Act and transferred to it for execution by a Court of competent jurisdiction.

CIVIL RULE obtained by the judgment-debtor.

The facts of the case and the arguments in the Rule are sufficiently stated in the judgment.

*Rishindra Nath Sarkar and Subodh Chandra Dutta* for the petitioner.

*Sarat Chandra Basak*, Senior Government Pleader, and *Ramaprasad Mookerjee*, Assistant Government Pleader, for the opposite-party.

GHOSE J. This Rule is directed against an order of the learned Small Cause Court Judge at Sealdah overruling the petitioner's objection as to the execution of the decree. It appears that the opposite-party landlord brought a Rent Suit No. 1022 of 1930 in the Court of the Munsif at Ranaghat and impleading the petitioner as one of the defendants tenants. A decree was obtained and in execution thereof, the opposite-party No. 1 purchased the suit lands on March 8, 1934, the sale being confirmed on April 24, 1934. Before that date, the opposite-party No. 1 brought another rent-suit against the same persons, being Rent Suit No. 790 of 1934 for the recovery of arrears of rent for the period 1337 to 1340. A decree was obtained on July 26, 1934. On November 29, 1937, this decree was transferred for execution to the District Judge of the 24-Parganás, who again

\*Civil Revision, No. 1018 of 1938, against the order of T. K. Nag, Small Causes Court Judge at Sealdah, dated June 11, 1938.

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transferred it to the Court of Small Causes at Sealdah. The latter Court directed attachment of the moveable properties of the petitioner. The petitioner, thereupon, filed an objection which was, however, overruled by the Small Cause Court by his order dated June 11, 1938. Against that order the present Rule has been obtained.

It appears from the order complained against that the only point which was pressed in the lower Court was that the execution case is barred by the special law of limitation under Art. 6, Part III, Schedule III of the Bengal Tenancy Act. The learned Judge held that the decree obtained is not a rent-decree but a money-decree and so the execution case is not barred by limitation. It is contended in this Court that at least the ordinary law of limitation should apply. But we are not satisfied from any evidence on the record that the present application for execution was filed more than three years after the previous application. The point does not appear to have been pressed in the lower Court and the question of fact was not investigated. Then, as to the special law of limitation under the Bengal Tenancy Act it is conceded by the learned advocate for the petitioner that the present decree is not executable under s. 65 of the Bengal Tenancy Act, there being no relationship of landlord and tenant between the parties at the time of the decree. That being so, the petitioner is not entitled to plead limitation as specially provided for in the Bengal Tenancy Act. It is, however, strongly contended that the decree was a decree for rent and the suit would come under cl. (8) of the Second Schedule of the Provincial Small Cause Courts Act as a suit which is excepted from the cognisance of a Court of Small Causes. This point again does not appear to have been pressed in the lower Court. Clause (8) aforesaid is subject to an exception where the Judge of the Court of Small Causes has been expressly invested with the authority of exercising jurisdiction with respect to suits for the recovery of rent. Here, again, there is a question of fact

which might well have been raised and decided in the lower Court, but it was not so investigated. The learned advocate for the opposite-party said that there was no reason to suppose that the learned Judge in the Court below was so invested. But conceding that the suit comes under the exception, what we have got here is a decree which has already been passed and is sought to be executed. Dr. Basak has contended that s. 7 of the Code of Civil Procedure read with s. 39 of the same Code does not prohibit an ordinary Civil Court from transferring a decree to a Court of Small Causes for execution and once such decree has been so transferred, the Small Cause Court would under s. 42 be entitled to deal with it. That a decree made in a suit which is excepted from the cognisance of a Court of Small Causes may be transferred to a Court of Small Causes for execution is contemplated by the fact that there are separate clauses: sub-cl. (i) and (ii) in cl. (a) of s. 7 of the Civil Procedure Code. Moreover, s. 34 of the Provincial Small Cause Courts Act specifically lays down a procedure to be observed in the case of transfer of decrees as between a Court of Small Causes and a Court of ordinary jurisdiction. From this point of view, it may be said that the Court of Small Causes was within its jurisdiction in proceeding to execute a decree which had been transferred to it by a Court of competent civil jurisdiction. The learned advocate for the petitioner has contended that the decree cannot be executed by the landlord, because the relationship of landlord and tenant did not subsist at the time of the decree. It is not, however, open to him to take up this position, having regard to the fact that the decree was transferred to the executing Court. In these circumstances the petitioner has not been able to satisfy us that there is a case for revision.

The Rule, accordingly, is discharged with costs—three gold *mohurs*.

LODGE J, I agree.

*Rule discharged.*

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