

Before Mr. Justice Morris and Mr. Justice Prinsep.

1879
Dec. 12.

PARBUTTY CHURN SEN AND OTHERS (DECREE-HOLDERS) v. SHAIK
MONDARI (JUDGMENT-DEBTOR).*

Ejectment Suit—Execution-Proceedings—No Appeal to High Court where sum decreed less than Rs. 100—Beng. Act (VIII of 1869), ss. 52, 102.

An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than Rs. 100. Nor can an application, made to eject the tenant on his default to pay into Court the moneys due under the decree within the time fixed by s. 52 of Beng. Act VIII of 1869, confer such right of appeal.

In this case, Parbutty Churn Sen, having instituted a suit against Shaikh Mondari for arrears of rent and ejectment under s. 52 of Beng. Act VIII of 1869, obtained, on the 12th November 1878, a decree for a sum less than Rs. 100. The decree further ordered that, on default made in the payment into Court of the moneys due under the decree within the fifteen days fixed by the section, the defendant should be ejected from his holding. Such default having been made, the Court of first instance granted the ejectment. The defendant, thereupon, appealed to the District Judge, who, on the authority of *Rao Banceram v. Rao Madhubram* (1) and *Nobokristo Mookerjee v. Ramesshur Goopto* (2), being of opinion that the facts in the case justified the exercise of a discretion vested in him to stay execution, reversed the decision of the Court below.

The plaintiff thereupon appealed to the High Court.

Baboo *Trailokya Nath Mitter* for the appellants.

Baboo *Grish Chunder Choudhuri* for the respondents.

The judgment of the Court (MORRIS and PRINSEP, JJ.) was delivered by

MORRIS, J.—Where a suit is brought under s. 52 of the Rent Law, for the recovery of arrears of rent and for ejectment in

* Appeal from Order, No. 180 of 1870, against the order of W. F. Meres, Esq., Officiating Judge of Zilla Tipperah, dated the 13th May 1879, reversing the order of Baboo Upendro Nath Ghose, Munsif of Kusbul, dated the 8th February 1879.

(1) 10 B. L. R., App., 2.

(2) 2 Wym., Act X. Cases, 75.

the same action, and the amount claimed is less than Rs. 100, an appeal cannot, under s. 102, lie to this Court. The ejection of the ryot is not a necessary consequence of execution of the decree in such a suit. It depends entirely upon a contingency arising out of the neglect or recusancy of the ryot to make payment within the time specified. That being so, the jurisdiction of the Court cannot possibly be affected by the conduct of one of the parties in the course of execution of the decree. The suit must, we think, be dealt with as it was originally laid, and the proceedings in execution treated as a part of that suit, and subject to the same rule as regards jurisdiction throughout its various stages, as the suit itself.

In this view the preliminary objection must prevail, and the appeal be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Morris and Mr. Justice Prinsep.

KRISTO COOMAR. NAG (DECREE-HOLDER) v. MAHABAT KHAN
(JUDGMENT-DEBTOR).*

1880
Feb. 5.

Execution-Proceedings—Limitation—Application to Proper Court for Execution—Aid of Execution—Act XV of 1877, sched. ii, art. 167.

A, the judgment-debtor, opposed an application made by B the judgment-creditor for execution under a decree. This objection was overruled on the 17th January 1876. The appeal by A from this order (B being represented and opposing A's appeal at the hearing) was dismissed on the 2nd October 1877. On a second application for execution made by B on the 18th March 1879,—

Held, that such application was barred under art. 179, sched. ii, Act XV of 1877.

Bipro Doss Gossain v. Chunder Seegur Bhattacharjee (1) distinguished.

THE records in this case were sent for, and a rule issued on an application made by the decree-holder under s. 622 of the Code of Civil Procedure. The facts of this case sufficiently appear from the judgment of the Court.

* Motion No. 1891 of 1879, in the matter of an appeal from an Order No. 11 of 1879, of the Judge of Pabna, dated the 11th of October 1879.

(1) B. L. R., Sup. Vol., 718; S. C., 7 W. R. 521.

1879
FARBUTTY
CHURN SINGH
v.
SHAIK MON-
DARI.