

1879  
 MOHAMMED  
 ELAHEE  
 BUKSH  
 of  
 KALLY MOHUN  
 MOOKHOPA-  
 DHYA.

portion of the amount claimed as enhanced rent, there can be no question that, in accordance with its express terms, that part of the decree was "superseded" by the proceeding in appeal relative to the enhanced rent of 1278. And again, under the authority of the Full Bench above quoted, the decree, if it be a decree for enhanced rent of 1279, must be treated as subordinate to, and dependent upon, the decree which disallowed the enhanced rent claimed for 1278.

The order of the Judge is, therefore, set aside, and the judgment-debtors, appellants, are declared entitled to recover back from the judgment-creditors with interest at 6 per cent. per annum such amounts as were realized by them as enhanced rent under the decree. The Judge will, upon this application of the judgment-debtors, take necessary steps for the recovery of the money.

*Appeal allowed.*

*Before Mr. Justice Morris and Mr. Justice Prinsep.*

GYAMONEE (DECREE-HOLDER) v. RADHA ROMON (OBJECTOR).\*

1879  
 Dec. 4.

*Execution of Decree—Order on questions arising between Co-Decree-holders not appealable—Civil Procedure Code (Act X of 1877), ss. 244, art. (c) 588.*

A decree-holder, having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds arising from such execution should only be paid over to the co-decree-holders jointly. *Held*, that the question in dispute being one between co-decree-holders, and not between parties to the suit or their representatives as contemplated by art. (c), s. 244 of the Civil Procedure Code, no appeal would lie from such order.

In this case, one Gyamonee, having assigned one-third share of her decree, applied several times jointly with Radha Romon, her assignee, for execution. Subsequently, Gyamonee alone made a further application for execution of the decree, and the

\* Appeal from Order, No. 130 of 1879, against the decree of Baboo Nobin Chunder Ghose, Subordinate Judge of Zilla Mymensing, dated the 24th March 1879.

Subordinate Judge, while granting the application, directed that neither Gyamonee nor Radha Romon should be entitled to take the moneys arising from such execution out of Court, except in their joint capacity of co-decree-holders.

1879  
 GYAMONEE  
 v.  
 RADHA  
 ROMON.

Against this order Gyamonee appealed to the High Court.

Baboos *Mohini Mohun Roy* and *Lall Mohun Das* for the appellant.

Baboo *Nullit Chunder Sein* for the respondent.

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

MORRIS, J. (who, after stating the facts, proceeded as follows):—The preliminary objection taken, that no appeal lies against the order of the Subordinate Judge in this case, must prevail. Clearly, since a decree-holder under the Act includes any person to whom a decree is transferred, and by inference any person to whom a share in a decree is transferred, the question raised is a question as between two co-decree-holders. This Court is not called upon now to determine whether Radha Romon was brought rightly or wrongly on the record as a party, and allowed to take out execution. It must be taken that he has been rightly allowed. This then being so, we consider that the provision of cl. (c) s. 244, Act X of 1877, does not apply to such a case as this. There is no question arising between the parties to the suit in which the decree was passed, or their representatives. This is practically a difference only between one decree-holder and another decree-holder.

The appeal is dismissed with costs.

*Appeal dismissed.*