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been appointed. It now turns out that a receiver had been appointed before our order was passed. Therefore these directions must be cancelled, and our order dismissing the appeal, upon the ground that no appeal lies, will alone stand. It is represented to us, that the Subordinate Judge has made no provision regarding any payment of money to the appellant for the purpose of defending the suit pending in the lower Court; and Mr. Bonnerjee on behalf of the plaintiffs gives his consent that there should be a direction given to the Subordinate Judge to allow to the defendant from time to time such sums of money as would be reasonably necessary for conducting the litigation on her behalf. We, therefore, direct that the lower Court, if any application be made to it on behalf of the defendant to be supplied with reasonable funds for the purpose of defending the suit, should take that application into his consideration, and allow such sums of money from time to time to be paid by the receiver to the defendant as in his discretion would be necessary to defend the suit.

The costs of this application will be costs in the cause. Let the record be forthwith sent back.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Field.

MOHENDRO COOMAR DUTT AND OTHERS (JUDGMENT-DEBTORS) *v.* HEERA MOHUN COONDOO AND OTHERS (AUCTION-PURCHASERS).* 1881 *Aug.* 4.

ISHANESWARY DASEE (JUDGMENT-DEBTOR) *v.* GOPAL DAS DUTT AND OTHERS (DECREE-HOLDERS).*

Execution-Sale—Material Irregularity—Sale of a Portion of a Tenure—Sale for Arrears of Rent — Mortgage-Decree — Civil Procedure Code (Act X of 1877), s. 311.

The mere fact that the amount of rent payable in respect of a tenure brought to sale in execution of a decree is not stated in the sale-proclamation, is not a material irregularity within the meaning of s. 311 of the Civil

* Appeals from Original Orders, Nos. 108 and 109 of 1881, against the order of Baboo Bhoobun Chunder Mookerjee, Subordinate Judge of the 24-Parganas, dated the 24th February 1881.

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Procedure Code (Act X of 1877), though if the amount of rent payable were stated to be more than it actually was, that might constitute such an irregularity, as tending to lessen the price at which purchasers might be willing to buy.

Where decrees for arrears of rent had been obtained by fractional shareholders in a tenure, and in execution thereof a moiety of the tenure had been sold, it appeared that the other moiety had been sold at the same time in execution of a mortgage-decree against some of the judgment-debtors in the rent-suits, on an objection being taken to the confirmation of such sale on the ground that the whole tenure should have been sold in execution of the rent decrees,—

Held, that all that the decree-holders were entitled to have sold, was the right, title, and interest of their judgment-debtors, and that they were in the position of ordinary creditors having no lien on the tenure; and that, consequently, the mortgagor being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent decrees was a good sale, and could not be set aside.

THESE two appeals, which were heard together, were against the orders of the Subordinate Judge of the 24-Parganas confirming two separate sales with respect to one property, which had been held on the same day, *viz.*, 20th September 1880.

In the first case (No. 108), the decree-holders were the mortgagees of an eight-annas share in the property, and they had obtained an order dated the 15th February 1880, directing that the eight annas share in the property, covered by their mortgage and belonging to the judgment-debtors in that case, should be sold in satisfaction of their decree.

In the second case (No. 109), the decree-holders were fractional shareholders of the tenure, and the decrees held by them were for arrears of rent against both the judgment-debtors (appellants) in that case, and the mortgagors of the other eight annas share.

The objections raised in both cases against the sales being confirmed, were substantially the same, the judgment-debtors alleging that there had been material irregularities in publishing and conducting the sales, and that in consequence they had suffered substantial injury; and an additional objection was urged in the second case, that the Court should have sold the entire tenure in execution of the decrees for arrears of rent, and not merely the eight annas share which had been sold.

The nature of the objections appears sufficiently from the judgment of the High Court, both cases being heard at the same time.

Baboo *Gurudas Banerjee* and Baboo *Saroda Churn Mitter* for the appellants.

Baboo *Chunder Madhub Ghose*, Baboo *Taruck Nath Sen*, Baboo *Tarucknath Dutt*, Baboo *Umbica Churn Bose*, and Baboo *Bhowany Churn Dutt* for the various respondents.

The following judgments of the Court (PRINSEP and FIELD, JJ.) were delivered by FIELD, J.:—

No. 108.—This is an appeal against the order of the Subordinate Judge of the 24-Parganas confirming a sale, and it is contended that this sale ought not to have been confirmed—*first*, because there was material irregularity in publishing it; and *secondly*, because substantial injury had been sustained by the appellants in consequence of such material irregularity. The first material irregularity alleged is, that the sale-proclamation was not published in the mofussil. We agree with the Subordinate Judge that the weight of evidence is in support of the sale-proclamation having been duly published in the mofussil.

The next contention is, that as the amount of annual rent payable upon the tenure was not stated in the notification of sale, this is a material irregularity. We certainly are of opinion that the amount of rent payable upon the tenure ought, in the careful transaction of business, to have been set out in the sale-proclamation; but we are not prepared to say that the absence of this information, which is not, in so many words, prescribed by the law, was a material irregularity within the meaning of s. 311. If the annual rent had been stated to be more than it really was, this might have been material as tending to lessen the price at which purchasers would be willing to buy; but no information being given on the point, purchasers cannot be said to have been misinformed.

Then it is contended, that the decree-holders dissuaded purchasers from bidding at the sale. We think that the remarks

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of the Subordinate Judge upon the evidence bearing upon this point are proper; and we see no reason to differ from the view which he has taken on this question. Under these circumstances, we are of opinion, that no material irregularity has been established; and this being so, this appeal must be dismissed with costs.

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No. 109.—With reference to the question of material irregularity, the grounds taken in this appeal are the same as those taken in Appeal No. 108, and will be disposed of by the observations already made in the judgment in that case. There is, however, a further contention in this appeal,—*viz.*, that the tenure ought to have been sold in its entirety, and that the Subordinate Judge was wrong in selling a moiety of the tenure only in execution of the decrees for rent. Now, these rent-decrees were obtained by persons who were sharers only, and consequently, under the law at present in force, these decree-holders were not entitled to bring the tenure itself to sale under that special procedure by which a tenure is sold, in execution of a decree for arrears of its own rent, free from all incumbrances. All that these decree-holders, being sharers, were entitled to sell, was the right, title, and interest of the judgment-debtor. Now, let us see what this right, title, and interest amounted to in the present case. There was admittedly a mortgage-decree obtained upon a mortgage-bond, by which one moiety of the tenure had been hypothecated; and this decree entitled the mortgagee to enforce his lien. This being so, it is clear that all that remained to sell in satisfaction of the rent-decrees, and after the mortgage had been satisfied, was eight annas only. Taking another view of the question, it is clear that the holders of the decrees for rent had no lien upon the tenure. Whatever contention may be raised when a tenure is sold under the special procedure in order to satisfy the arrears of its own rent, that the landlord must be presumed to have a lien upon the tenure for such rent, we think no such contention can possibly be raised in a case in which the decree-holder, being a sharer only, is entitled to sell not the tenure itself, but the interests of the judgment-debtor only. This being so, we have here the case of one secured

creditor holding a decree, which entitles him to enforce his lien; and another decree-holder not secured and holding a simple money-decree. Under these circumstances, we think it impossible to say that the Subordinate Judge was wrong in allowing the mortgaged eight annas to be first sold in execution of the mortgage-decree, and then selling the remaining moiety in execution of the decrees for rent. This appeal, therefore, must also be dismissed with costs.

Appeals dismissed.

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Before Mr. Justice Mitter and Mr. Justice Maclean.

WAZEER MAHTON AND ANOTHER (DEFENDANTS) *v.* CHUNI SINGH AND ANOTHER (PLAINTIFFS).*

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Res Judicata—Finality of Arbitrator's Award, when Judgment is passed thereon—Question dealt with by such Award raised in a subsequent Suit.

Where a case was referred to arbitration, and the award was subsequently filed and judgment passed in accordance therewith, and subsequently, in another suit between the same parties, a question dealt with in the award was raised,—

Held, that such question was *res judicata* between the parties, the judgment on the award having the same effect as an ordinary judgment of a Court, and being conclusive on the point.

THIS was a suit for arrears of rent for the years 1284 and 1285 (1876—1878). The rent was payable in kind, and the amount of land in respect of which it was alleged to be due was found by the original Court to be 44 bighas and 12 cottas. The plaintiffs alleged that they were entitled to a nine-annas share, and that the defendants were only entitled to a seven-annas share; but the defendants disputed this, and contended that the plaintiffs were only entitled to an eight-annas share of the produce, and that a tender had been made of that amount and refused previous to the suit being brought.

* Appeal from Appellate Decree, No. 721 of 1880, against the decree of H. Beveridge, Esq., Judge of Patna, dated the 19th January 1880, reversing the decree of Babu Poresh Nath Banerjee, Subordinate Judge of that district, dated the 27th May 1879.