

APPELLATE CIVIL.

Before Mr. Justice Pontifex and Mr. Justice Field.

RASHBEHARY MOOKHOPADHYA AND ANOTHER (OBJECTORS) v.
MAHARANI SURNOMOYEE (DECREE-HOLDER).*

1881
May 13.

*Appeal—Representatives—Civil Procedure Code (Act X of 1877),
s. 244, cl. (c), & ss. 278, 283.*

The holders of a taluq hypothecated certain other property belonging to them as security for the rent. A decree for rent was obtained against them. Prior to attachment, the taluqdars assigned their interest in eight annas of the hypothecated property to A, and made a mourosi lease of the remaining eight annas to him. The decree-holder then obtained an order for summary sale for the rent due for 1876-77. She then attempted to sell the property hypothecated to her. An objection by A was allowed. A regular suit was then instituted by the decree-holder against A, and it was declared that she was, after selling the taluq, entitled to sell the hypothecated property. The decree-holder again attempted to execute her rent-decree by attaching and selling the hypothecated property, and an objection by A was disallowed.

Held, that no appeal lay from the order disallowing the objection, as A could not be considered to be a 'representative' of the taluqdars within the meaning of s. 244, cl. (c) of the Civil Procedure Code; and was, therefore, debarred from appealing under ss. 278 and 283.

Baboo *Rashbehary Ghose*, Baboo *Prannath Fundit*, and Baboo *Biprodas Mookerjee* for the appellants.

Baboo *Sreenath Dass* and Baboo *Gurudas Banerjee* for the respondent.

The facts of this case fully appear from the judgment of the Court (PONTIFEX and FIELD, JJ.), which was delivered by

PONTIFEX, J. — In this case certain Chowdhries held a taluq under Maharani Surnomoyee; and by an ekrar they hypothecated certain other property belonging to them as secu-

* Appeal from Order, No. 106 of 1881, against the order of Baboo Kristo Mohun Mookerjee, Second Subordinate Judge of the 24-Pargannas, dated the 19th February 1881.

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rity for the rent of the taluq. The Maharani instituted a suit against them for the rents of the taluq from Kartick to Cheyt 1281, amounting to about Rs. 9,000, and obtained a decree. Under the ekrar, the property hypothecated by them would be liable, no doubt, to satisfy that decree; but subsequently to the execution of the ekrar, and prior to any attachment by the Maharani under her rent-decree, the Chowdhries assigned all their interest in eight annas of the property hypothecated to Rashbehary Mookerjee and another; and with respect to the other eight annas made a *mourosi* lease thereof to the same persons. Subsequently the Maharani, under Reg. VIII of 1819, obtained an order for summary sale for the rents from Srabun to Cheyt 1283, and the property was sold; but it is alleged by the applicant before us that such sale was invalid, inasmuch as the taluq was purchased by the taluqdars themselves. For the purposes of this judgment it is not necessary for us to decide any question as to that, as in consequence of a preliminary objection by the respondent, we are unable to go into the merits of the case. In execution of her rent-decree, Maharani Surnomoyee subsequently attempted to bring to sale the property that had been hypothecated by the Chowdhries to her under the ekrar. In such execution-proceedings, Rashbehary Mookerjee and his co-proprietor appeared as objectors, and alleging that there had been a subsequent assignment of the Chowdhries' interests to them, disputed the right of the Maharani to sell this property in execution of her rent-decree. This objection was properly allowed; whereupon the Maharani instituted a regular suit against Rashbehary Mookerjee and his co-proprietor, and by the decree in that suit it was declared, that the Maharani had a right to bring the property contained in the ekrar to sale for the purpose of realizing her rent-decree; but that, as a condition precedent, she was bound, first of all, to sell the taluq itself for the purpose of satisfying her rent-decree. Subsequently to that decree and to the summary sale, the Maharani has again attempted to execute her rent-decree by attaching and bringing to sale the property comprised in the ekrar, and Rashbehary Mookerjee and his co-proprietor have again intervened as objectors in the execution-

proceedings. It has been decided by the Subordinate Judge upon the evidence, that the Maharani, notwithstanding the objection of Rashbehary Mookerjee and his co-proprietor, is entitled to proceed to sell all the properties comprised in the ekrar. Rashbehary Mookerjee and his co-proprietor, being dissatisfied with that order, have appealed to us; but a preliminary objection has been taken on the part of the Maharani that the appellants have no right of appeal to this Court, inasmuch as being merely objectors, they are barred by ss. 278 and 283 of the Procedure Code from appealing to this Court. We are referred by the appellants' vakeel to s. 244, cl. (c) in support of their right of appeal. In that clause it is enacted that "any other questions arising between the parties to the suit in which the decree was passed, or *their representatives*, and relating to the execution, discharge or satisfaction of the decree," shall be determined by order of the Court executing the decree; and it is urged on behalf of the appellants, that they are representatives of the Chowdhries within the meaning of that clause. Now, we think, that though the word 'representatives' in that clause may include subsequent representatives in point of interest, and is not confined only to heirs or executors, yet, inasmuch as Rashbehary Mookerjee and his co-proprietor had become assignees of the taluqdars before the rent-suit was instituted by the Maharani, they cannot, within the terms of that clause, be considered as representatives of the taluqdars. Their interest, in fact, came into existence before the suit against the taluqdars, and they can, therefore, scarcely be considered in that suit as representatives of the taluqdars, the judgment-debtors. We think, therefore, that the preliminary objection that has been taken by the Maharani must prevail; that Rashbehary Mookerjee and his co-proprietor are not entitled to appeal on the merits to this Court; and we are, therefore, unable to go into the merits, and decide between the parties, whether the Maharani is now entitled to proceed against the property, which was hypothecated to her by the ekrar, in order to realize the amount of decree in the rent-suit.

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. *Appeal dismissed.*