

first Court and remanded the suit for re-trial on the merits, under s. 351 of Act VIII of 1859. This decision is open to the objection taken on special appeal.

S. 37 of Act XXIII of 1861 gives the Appellate Court the same powers in cases of appeal which are vested in the Courts of original jurisdiction in respect of original suits. But the Judge's order cannot be supported under this section. He has held that there has been an improper consideration and admission of evidence affecting the merits of the claim, although these matters were never put in issue in the appeal before him. The Judge should have confined himself to deciding the matters put in issue by the parties. S. 337 of Act VIII of 1859 shows the circumstances under which a Court may reverse or modify a decree in favour of plaintiffs or defendants who have not appealed, but this section does not apply to the case before us. The defendants might have appealed or preferred objections under s. 348, and in that case the Judge would have had to decide the questions raised, but they never appeared to defend the appeal, and, we may add, have not done so in this Court. The only question before the Judge was that raised by the appellant, the plaintiff, and he should have confined his decision to that question.

1878

DURGA
PRASAD
v.
KHAIRATI.

APPELLATE CIVIL.

1878

January 2.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

UMRAO BEGAM (JUDGMENT-DEBTOR) v. THE LAND MORTGAGE BANK OF INDIA (DECREE-HOLDER).*

Act XVIII of 1873 (North-Western Provinces Rent Act), s. 9—Landholder—Right of Occupancy Tenant—Transfer of Right of Occupancy in Execution of Decree.

S. 9 of Act XVIII of 1873 does not prevent a landholder from causing the sale in execution of his own decree of the occupancy-right of his own judgment-debtor in land belonging to himself. *Ablakh Rai v. Udit Narain Rai* (1) distinguished.

THE proprietary rights of the judgment-debtor in the village of Sikandarpur were sold on the 23rd October, 1876, and were

* Miscellaneous Regular Appeal, No. 96 of 1877, from an order of Pandit Har Sahai, Subordinate Judge of Farukhabad, dated the 27th August, 1877.

(1) I. L. R., 1 All. 353.

1878
 UMRAO
 BEGAM
 v.
 LAND
 MORTGAGE
 BANK OF
 INDIA.

purchased by the decree-holder. The decree-holder now applied for the sale of the right of occupancy acquired by the judgment-debtor, under the provisions of s. 7 of Act XVIII of 1873, in the sîr-land appertaining to such proprietary rights. The judgment-debtor objected that, under the provisions of s. 9 of that Act, such right of occupancy was not transferable. The Court of first instance overruled this objection on the ground that the provisions of s. 9 of Act XVIII of 1873 were not applicable to sales in execution of decrees but to voluntary transfers.

On appeal by the judgment-debtor to the High Court it was again contended by her that her right of occupancy in the sîr-land as an ex-proprietor could not be sold in execution of decree under the provisions of s. 9 of Act XVIII of 1873.

Babu Beni Prasad, for the appellant.

Pandit Ajudhia Nath, for the respondent.

The judgment of the High Court was delivered by

PEARSON, J.—The lower Court's view that s. 9 of the Rent Act applies to private transfers of occupancy-rights only and not to sales of such rights in execution of decree is, in the general form in which it is stated, opposed to the Full Bench ruling of this Court dated 19th February, 1877 (1). But in the case out of which that ruling arose the person who sought to bring to sale an occupancy right possessed by his judgment-debtor in a holding was not the zamindar, the proprietor of the land. In the present case the decree-holder is himself the zamindar. The section appears to have been enacted in the interest of landholders who may presumably waive the privilege it confers on them. It would be unreasonable to hold that a landholder should not be free to cause the sale in execution of his own decree of the occupancy-right of his own judgment-debtor in land belonging to himself. Such a case cannot fall within the scope of the Full Bench ruling above-mentioned. We therefore dismiss the appeal with costs.

Appeal dismissed.