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that a complaint dismissed under s. 203, Criminal Procedure Code, "cannot be re-heard except on an order made under s. 437." All of the four judgments above referred to under either s. 203 or s. 437 were apparently delivered before the present Criminal Procedure Code came into force. Neither of the Madras rulings is obtainable here, and in all probability neither of the lower Courts has had an opportunity of perusing either of them. Neither of the two judgments appear to be precisely in point. In the present case the complainant was not, on the first occasion, asked if he had any witnesses to call, and beyond his own brief statement no evidence whatever was recorded.

I think that when the Magistrate who had dismissed the original complaint ordered a further inquiry, on receiving the complainant's second petition, he did not act contrary to any provision of the law; and considering the circumstances under which the complaint had been dismissed, a further inquiry was, in my opinion, necessary.

I see no reason for interference. The applicants will work out the unexpired portions of their short sentences, and the record will be returned to the District Court.

FULL BENCH.

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Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oulfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

JUGAL (JUDGMENT-DEBTOR) v. DEOKI NANDAN (DECREE-HOLDER).*

Ex-proprietary tenant—Trees—Sale in execution of decree—Act XII of 1881 (N.-W. P. Rent Act), ss. 7, 9.

Held by the Full Bench that an ex-proprietor, who under s. 7, of Act XII of 1881 (N.-W. P. Rent Act) gets occupancy-rights in his sir-land, obtains analogous rights in the trees upon such sir-land.

A purchaser of proprietary rights in zamindari property at a sale in execution of a decree for money held by himself applied in execution of the decree for the attachment and sale of certain trees growing on the judgment-debtor's ex-proprietary holding.

* Second Appeal No. 43 of 1886, from an order of M S. Howell, Esq., District Judge of Aligarh, dated the 24th February, 1886, reversing an order of Baba Madho Das, Munsif of Aligarh, dated the 25th September, 1885.

Held by the Full Bench, with reference to the provisions of ss. 7 and 9 of Act XII of 1881 (N.-W. P. Rent Act), that the trees were not liable to attachment and sale in execution of the decree.

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Per STRAIGHT, J.—When a proprietor sells his rights and becomes entitled, under s. 7 of the Rent Act, to the rights of an ex-proprietary tenant, he holds all rights in the land, *quâ* such tenant, which he formerly held in his character as proprietor, and paying rent in his capacity as tenant. Where there are trees upon the sir-land held by him at the time when he lost his proprietary rights, neither the purchaser of those rights nor he himself can cut down or sell them *in invitum* to each other. Short of cutting the trees down, he has the same right to enjoy the trees as he originally had.

THE appellant in this case, one Deoki Nandan, obtained a decree for money against the respondent Jugal, and in execution thereof caused to be sold, and himself purchased, the rights and interests of the judgment-debtor in certain zamindari property. The judgment-debtor having thus become the decree-holder's ex-proprietary tenant in the land held by him as sir, the decree-holder brought a suit against him for profits in respect of certain trees growing on the sir-land. He obtained a decree in the Court of first instance and the lower appellate Court, but that decree was reversed on appeal by the High Court, which held that he was not, in that suit, entitled to recover damages or profits.

The appellant then fell back upon his former decree, and in execution thereof applied for the attachment and sale of certain trees on the judgment-debtor's ex-proprietary holding. The Court of first instance (Munsif of Hâthras) passed the following order:—
 "I think that the trees are not liable to be sold by virtue of the provisions of s. 9 of Act XII of 1881. I therefore reject the decree-holder's application, so far as it relates to the sale of the trees."

From this order the decree-holder appealed to the District Judge of Aligarh, who gave judgment as follows:—

There is no ex-proprietary right in trees, that right being restricted by s. 7 of Act XII of 1881 to 'land.' Consequently s. 9 does not forbid a transfer of the trees in question. I reverse the Munsif's order rejecting the application for attachment and sale of the trees."

"The judgment-debtor appealed to the High Court on the ground that the trees, "being part and parcel of an ex-proprietary tenant's holding, cannot be sold in execution of a decree."

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The appeal came for hearing before Oldfield and Brodhurst, JJ., who passed the following order :—

“We refer to the Full Bench the question raised in this case, whether the trees growing on the land of the judgment-debtor are liable to attachment and sale in execution of the decree.”

Mr. *Niblett*, for the appellant.

Munshi *Hanuman Prasad*, for the respondent.

The following judgments were delivered by the Full Bench :—

EDGE, C J.—The order of reference in this case is as follows :—
 “We refer to the Full Bench the question raised in this case, whether the trees growing on the land of the judgment-debtor are liable to attachment and sale in execution of the decree.” We are informed that the judgment-debtor is an ex-proprietary tenant within the meaning of s. 7 of the N.-W. P. Rent Act, and also that the judgment-creditor is the person who has purchased his proprietary interest and made him the ex-proprietary tenant he is. This being so, we have both landlord and tenant before us. Munshi *Hanuman Prasad*, on behalf of the landlord, the judgment-creditor, states that these trees do not belong to the landlord, but remain with the ex-proprietary tenant as part of his holding. Assuming, for the purposes of this case, that this admission is well-founded, the question is, can the trees be taken in attachment and sale under the decree ?

It appears to me that this question must be answered in the negative. The object of the Rent Act was that these ex-proprietary tenants should be protected in their holdings, and that if any one should sell them up, they should remain and cultivate their tenancies. S. 9 of the Act provides that “no other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom, as co-sharers, such right originally arose, or who have become by succession co-sharers therein.” This must be read with s. 7 ; and what we are asked to say is, that one of the rights enjoyed by the judgment-debtor as an ex-proprietary tenant—namely, the right to the trees growing on his holding and to the benefit of their fruit—shall be taken away from him for the benefit of his judgment-creditor, who happens in this case to be his landlord. This appears to me to be contrary to

ss. 7 and 9. Further, with reference to s. 7 itself, when a person becomes an ex-proprietary tenant, the section provides that the rent shall be fixed upon this general principle: "a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages." In many cases trees may be of advantage to a holding, and possibly a higher rent might often be got for land which has trees upon it than for the same land when despoiled of those trees, particularly if the trees were fruit-trees, as they are in the present case. If the trees in question were cut down by the judgment-creditor, the result would be that the holding of the ex-proprietary tenant would be deprived of its advantages as compared with similar land with the advantages of fruit-trees. By cutting them down the judgment-creditor would be diminishing the landlord's rent, because if he were entitled to cut the trees, such action would be lawful as against both landlord and tenant, and a reduction would follow. For these reasons my answer to the reference is in the negative.

STRAIGHT, J.—I am of the same opinion, but as I base my judgment upon somewhat broader grounds than those of the learned Chief Justice, I wish to state one or two additional facts. The plaintiff originally sued the judgment-debtor and obtained a decree, and himself purchased in execution thereof the rights of the judgment-debtor in certain zamindari lands. Naturally he assumed that the entire proprietary rights of the judgment-debtor in all the land short of what belonged to the ex-proprietary tenant's right had passed to him, and he brought a suit against the judgment-debtor for profits in respect of certain trees growing on the land. He obtained a decree in both the Courts below, but in appeal in this Court, a Division Bench held that he was not entitled to recover damages or profits in that suit.

In the result he fell back upon his decree in the former suit, and he now seeks the attachment of certain trees growing on the ex-proprietary holding of the judgment-debtor.

I am of opinion that he is not legally entitled to do this. It appears to me that when a proprietor sells his rights, and by operation of law becomes entitled, under s. 7 of the Rent Act, to the

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rights of an ex-proprietary tenant, he holds all rights in the land, *quod* such tenant, which he formerly held in the character of proprietor, short of the actual proprietorship, and of course paying rent in his capacity as tenant; and where there are trees upon the *sir*-land held by him at the time when he lost his proprietary rights, neither the purchaser of those rights nor he himself can cut down or sell them *in invitum* to each other. He has a right to enjoy the trees as before, and, short of cutting them down, the same rights remain in him that he originally had. It is clear, therefore, that in this case the decree-holder has no right to sell something in which he himself has no separate or divisible interest; and though he no doubt has a proprietary interest, that is subject to the ex-proprietary tenant's right to use and enjoy the trees as heretofore. My answer to the reference is in the negative.

OLDFIELD, J.—I concur in the judgment of the learned Chief Justice. I think that any other answer to the reference than that which he proposes would defeat the object of s. 9 of the Rent Act. An ex-proprietor, who under s. 7 gets occupancy-rights in his *sir*-land, obtains rights of an analogous nature in the trees upon such *sir*-land. If the decree-holder has no power to sell the tenant's rights in the land, I cannot see how he can sell the rights in the trees upon the land as separate from the land, and for this reason I also would answer the reference in the negative.

BRODHURST, J.—I also concur in the answer proposed by the learned Chief Justice.

TYRRELL, J.—The appellant was formerly the zamindar of the land on which the timber stands, but it has passed from him by sale for debt to the respondent. The latter seeks to execute a decree which he holds against the former by bringing to sale some trees standing on the appellant's holding, which the respondent regards as the property of the appellant. But they can be so, as the respondent puts his case and claim, in no other way and under no other right than that of the occupancy-tenancy of the respondent, and as such the appellant's interests in the timber would not be liable to be transferred in execution of the respondent's decree. They would be protected by the provisions of s. 9 of the Rent Act. I do not of course lay down this proposition as one of general law, but only in

regard to the peculiar circumstances of the plaint and pleadings as appellant has chosen to put them in this case. I concur in the negative answer to the reference.

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On the case being returned to the Divisional Bench, the following judgment was delivered :—

OLDFIELD and BRODHURST, J.J.—With reference to the opinion of the Full Bench of this Court on the point referred, we set aside the order of the Judge and restore that of the first Court with costs.

Appeal allowed.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

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SUNDAR BIBI (PLAINTIFF) v. BISHESHAR NATH AND OTHERS (DEFENDANTS).*

Appeal to Her Majesty in Council—Civil Procedure Code, ss. 574, 596, 632, 633—“Substantial question of law”—Judgment of High Court—Contents of judgment—Rules made by High Court under s. 633 for recording judgments.

The intention of the Legislature as expressed in s. 633 of the Civil Procedure Code was that the High Court might frame rules as to how its judgments should be given, whether orally or in writing, or according to any mode which might appear to it best in the interests of justice. The section does not merely give the High Court power to direct that judgments shall be recorded in a particular book, or with a particular seal.

Rule 9 of the rules made under s. 633, in March, 1885, is therefore not *ultra vires* of the Court, and it modifies the provisions of s. 574 in their application to judgments of the High Court.

With reference to the terms of Rule 9, it is not necessary, in a case where the High Court substantially adopts the whole judgment of the Court below, to go through the formality of re-stating the points at issue, the decision upon each point, and the reasons for the decision.

Per EDGE, C.J.—Apart from Rule 9, it never was intended that s. 574 of the Code should apply to cases where the High Court, having heard the judgment of the Court below and arguments thereon, comes to the conclusion that both the judgment and the reasons which it gives are completely satisfactory, and such as the High Court itself would have given.

Assuming the provisions of s. 574 to be applicable, a judgment of the High Court stating merely that the appeal must be dismissed with costs and the judgment of the first Court affirmed, and that it was unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions.

Application for leave to appeal to Her Majesty in Council.