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be equally applicable to a Bengali, subject to the Hindu law of lower Bengal. It is admitted that the defendant-appellant here is such a Bengali. It appears to us, under the above circumstances that the lady having given those notes of hand for the *bond fide* purpose of carrying on the Indigo Factory, which, as a matter of fact, had existed and had been carried on by her deceased husband in her life time, the defendant-appellant is liable for the amount decreed against him in the court below. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Mahmood.

NOURANG RAI (DECREE-HOLDER) v. LATIF CHAUDHRI AND OTHERS
(JUDGMENT-DEBTORS).*

Execution of decree—Decree to be executed where there has been an appeal.

Where the appellate Court has modified the decree of the Court below, the decree of the appellate Court supersedes entirely that of the Lower Court, and is the only decree which can be executed. *Shohrat Singh v Bridgman* (1); *Gobardhan Das v. Gopal Ram* (2) and *Muhammad Salaiman Khan v. Muhammad Yar Khan* (3) referred to.*

The facts of this case sufficiently appear from the judgment of Mahmood, J.

Munshi *Kashi Prasad*, for the appellant.

The respondent was not represented.

MAHMOOD, J.—On the 29th September 1885, the plaintiff-appellant's claim for possession of certain property together with future *mesne* profits was partly decreed by the first Court. From the decree thus made an appeal was presented only by the plaintiff, and on the 16th December 1885, his appeal was decreed and so much of the decree of the first Court as had been passed against him was modified.

*Second Appeal No. 244 of 1890 from a decree of W. R. Burkitt, Esq., District Judge of Gorakhpur, dated the 5th December 1889, reversing a decree of Pandit Alopi Prasad, Munsif of Basti, dated the 3rd August 1889.

(1) I. L. R. 4 All., 376.

(2) I. L. R. 7 All., 366.

(3) I. L. R. 11 All., 267.

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Under an application for execution made on the 22nd May 1886, possession of the property was delivered to the decree-holder, appellant, on the 8th July 1886, and he was also awarded his costs.

The second application for execution was made on the 15th December 1887, and it was struck off on the 24th November 1888.

The third application for execution, which was made on the 3rd January 1889, was struck off on the 14th August 1889, in default.

The present litigation began with an application for execution made on the 23rd August 1889, which application relates solely to the question of future *mesne* profits, and upon the application being made the judgment-debtors objected, but their objections were disallowed by the first Court; but, upon appeal, the learned judge of the lower appellate Court, reversing the order of the first Court, allowed the objections of the judgment-debtors upon grounds which can best be expressed in his own words:—

“The decree to be executed is the decree of the appellate Court and that decree, varying the decree of the Court of first instance, makes no provision for future *mesne* profits, such profits therefore cannot be claimed in execution.”

Now in deciding this second appeal it is necessary to consider the effect of the Full Bench ruling in *Shohrat Singh v. Bridgman* (1) as interpreted by the recent Full Bench ruling in *Muhammad Sulaiman Khan v. Muhammad Yar Khan* (2). It is also necessary to bear in mind the ruling in *Gobardhan Das v. Gopal Ram* (3).

I am of opinion that the effect of these rulings is that the only decree which can be put into execution is the appellate decree of the 16th December 1885, and that, inasmuch as it was not a simple decree of affirmance, but a decree modifying the terms of the first Court, therefore, unless in the decree of the 16th December 1885, there was an order as to future *mesne* profits, no future *mesne* profits could be made the subject of execution. But the decree of the 16th December 1885, was not a decree of simple

(1) I. L. R., 4 All., 376.

(2) I. L. R., 11 All., 267.

(3) I. L. R., 7 All., 366.

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affirmance, but a decree modifying the original decree of the 29th September 1885, and this circumstance in my opinion distinguishes this case from the cases above referred to. After having fully heard the arguments, I am of opinion that the learned Judge has arrived at a correct conclusion, and I dismiss the appeal, but without any order as to costs, as the respondent is not represented.

Appeal dismissed.

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Before Mr. Justice Straight and Mr. Justice Knox.

GAYA SINGH AND OTHERS (DEFENDANTS) v. UDIT SINGH (PLAINTIFF).*

*Ex-proprietary tenant--Relinquishment of ex-proprietary rights--Act XII of 1881
(North-Western Provinces Rent Act) s.s. 9, 31.*

Though an ex-proprietary tenant cannot transfer his rights as such for a consideration, there is nothing to prevent his voluntarily relinquishing those rights.

The facts of this case are fully stated in the judgment of Straight, J.

Mr. Niblett, for the appellants.

Mr. Abdul Majid, for the respondent.

STRAIGHT, J.—It is necessary in order to explain the conclusion at which I have arrived to state in detail the facts of this case. One Gaya Singh and his brother Kunj Behari and his son Baldeo were the owners of a certain *bighadam* zamindari interest in the Azamgarh district. Appurtenant to that *bighadam* interest was an interest in certain *ser* lands which were cultivated by Gaya Singh, his brother and his son. The present plaintiff-respondent, Udit Singh, brought a suit against Gaya Singh, and in execution of his decree sold the property and purchased it at auction. Subsequently to that purchase Kunj Behari and Baldeo Singh, the brother and son of Gaya Singh, brought a suit to avoid that auction purchase, and made as parties thereto the present plaintiff, Udit Singh and Gaya Singh. That suit was dismissed by the first Court, and thereupon the plaintiffs appealed to the Court of

* Second appeal No. 1508 of 1888 from a decree of E. Galbraith, Esq., District Judge of Azamgarh, dated the 5th June 1888, confirming a decree of Munshi Man Mohan Lal, Sub-ordinate Judge of Azamgarh, dated the 30th November 1887.