

1887  
 DOYA CHAND  
 SHAHA  
 v.  
 ANUND  
 CHUNDER  
 SEN  
 MOZUMDAR.

to establish the proposition now contended for, that it is for the tenant or the person who claims to be the tenant to establish his rights to retain the lands in any suit brought against him by the zemindar or whenever the zemindar may think proper to call upon him to show his title. In our opinion the plaintiff is bound to start his case. There is no presumption that any tenure held is not a transferable tenure. We therefore affirm the judgment of the first Court and set aside that of the lower Appellate Court, the suit being dismissed with costs throughout.

K. M. C. *Appeal allowed.*

*Before Mr. Justice Prinsep and Mr. Justice Beverley.*

1887  
 February 10.

DWARIKA MOHUN DAS (JUDGMENT-DEBTOR) v. LUCKHIMONI DASI  
 (DECREE-HOLDER).<sup>4</sup>

*Attachment—Execution of decree—Partnership debt, Attachment of.*

An uncertain sum which may or may not be payable by one member to another of a partnership, not shown to have been wound up, cannot be attached or sold in execution of a decree.

LUCKHIMONI DASI in execution of her decree attached and advertised for sale the debts which she represented were due to Dwarika Mohun Das, the judgment-debtor, from his co-partner upon a partnership account. Dwarika Mohun objected that the debt being unascertained was not attachable; but the Subordinate Judge disallowed the objection. On appeal the District Court agreed with the Sub-Judge, and held that the case did not fall either under cl. (e) or cl. (h) of s. 266 of the Civil Procedure Code.

Dwarika Mohun appealed to the High Court.

*Baboo Lal Mohun Das* for the appellant.

*Baboo Harendra Nath Mukerjee* for the respondent.

The judgment of the Court (PRINSEP and BEVERLEY, JJ.) was as follows:—

The debtors apparently are partners in some firm. The  
 \* Appeal from Order No. 423 of 1886, against the order of W. H. Page, Esq., Judge of Dacca, dated the 11th of November, 1886, affirming the order of Baboo Beni Madhub Mittra, Subordinate Judge of District, dated the 22nd of September, 1886.

decree-holder seeks to attach and sell the interest of one of these debtors, which, in his application for execution of the decree, he terms to be a debt due to that judgment-debtor from the other judgment-debtor. The amount is uncertain. It is not even shown that the business of the firm has been wound up, nor is there any certainty that such a debt exists. We cannot therefore agree with the lower Courts that such an interest can be attached and sold in execution of the decree. The case of *Syud Tuffuzzool Hossein Khan v. Rughoonath Pershad* (1) seems to us to be exactly in point. The order of the lower Court is therefore set aside. The debtor-appellant will receive his costs in all Courts.

1887

DWARIKA  
MOHUN DA  
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*Appeal allowed.*

*Before Mr. Justice Prinsep and Mr. Justice Beverley.*

CHANDRA PRODHAN (JUDGMENT-DEBTOR) v. GOPI MOHUN SHAHA  
(DECREE-HOLDER).<sup>\*</sup>

1887

February 3.

*Execution of decree—Arrears of rent, Decree for—Beng. Act VIII of 1869, s. 58—Application for execution—Suspended proceedings, Effect of.*

G. obtained an *ex parte* decree in 1882 for a sum less than Rs. 500 as arrears of rent. Execution was taken out on the 19th May, 1885. On the 20th June C., the judgment-debtor, applied to have the decree set aside, whereupon the application for execution was struck off. On the 21st November C.'s application for a re-hearing was rejected. On the 3rd February, 1886, G. applied for the execution of his decree.

*Held* that the decree-holder was entitled to execution, the application of the 3rd February being a continuation of the proceedings commenced on the 19th May, which had been suspended by the order of the Court of the 20th June.

GOPI MOHUN SHAHA obtained on the 21st July, 1882, an *ex parte* decree for arrears of rent for a sum less than Rs. 500. Application for execution was made on the 19th May, 1885. On the 20th June Chandra Prodhan, the judgment-debtor, applied

\* Appeal from Order No. 403 of 1886, against the order of H. Peterson, Esq., Officiating Judge of Dinagepore, dated the 18th of August, 1886, affirming the order of Baboo Sitikantha Mullick, Munsiff of that district, dated the 22nd of May, 1886.

(1) 14 Moore's I. A., 40; 7 B. L. R., 186.