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came into operation would not entitle the assignees to ask the Court of execution to recognise them now.

We are next of opinion that the application for execution now before us made by Joykali cannot proceed. We cannot find that that application was ever allowed under s. 231, and therefore we must take it that Joykali had no authority to execute the entire decree. As the matter is not before us we abstain from expressing any opinion whether Joykali and Koilash Chunder jointly, or either of them separately, under permission given under s. 231, can execute the decree. The appeal is therefore dismissed. Each party to pay his own costs.

K. M. C.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Beverley.

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 January 7.

DOYA CHAND SHAHA (DEFENDANT No. 1) v. ANUND CHUNDER SEN
 MOZUMDAR (PLAINTIFF).³³

Onus of proof—Transferability of tenure—Resumption.

There is no presumption that any tenure held is not a transferable tenure, and a landlord who sues for khas possession on the ground that a tenure sold was not transferable must establish his case as an ordinary plaintiff.

ANANDA CHUNDER SEN brought a suit for khas possession of a plot of land which had been purchased in execution of a decree by Doya Chand Shaha, the principal defendant. Ananda alleged that the other defendants had held the land as his tenants, and inasmuch as their interest in it was not of a transferable nature, Doya Chand as auction-purchaser of that interest was a mere trespasser, and thus liable to be evicted from the land. Doya Chand contended, among other things, that the holding was a *mokurari* one and transferable both by law and custom. Upon the question whether the predecessors in title of Doya Chand had a saleable interest in the disputed land neither party gave any evidence, and the Munsiff was of opinion that the burden of proof lay on the plaintiff in the ordinary

³³Appeal from Order No. 268 of 1886, against the order of Baboo Promotho Nath Banerji, Subordinate Judge of Mymensingh, dated the 23rd of June, 1886, reversing the order of Baboo Rash Bohari Bose, Munsiff of Ghosegaon, dated the 5th of April, 1886.

way, and the fact of the defendant's admission that the plaintiff was the landlord did not make any difference. On appeal the Subordinate Judge, differing from the Court of first instance, held that the defendant having set up a *mokurari* title, and admitted the title of the plaintiff as the landlord, the onus lay upon him, and remanded the case for trial on the merits.

An appeal was preferred from that order to the High Court.

Mr. *Handley* (with him *Baboo Kashi Kant Sen*) for the appellants.

Baboo Srinath Das and *Baboo Mokund Nath Roy* for the respondent.

The Court (PRINSEP and BEVERLEY, JJ.) delivered the following judgment :—

The plaintiff sues to recover khas possession of certain lands now in the occupation of defendant No. 1. He states that the other defendants were his tenants, and that defendant No. 1 has purchased in execution of a decree the rights of those tenants which were not transferable. The sole question on which the case was tried by both the lower Courts and which is now argued before us is on whom the onus, under such circumstances, would lie, whether it is for the defendant to prove that he acquired the right to hold the land inasmuch as the tenure was a transferable tenure, or whether the plaintiff is not bound to start his case by showing that the tenancy of defendants 2, 3 and 4 was not transferable, and that consequently he had a right to re-enter on their relinquishing the land in favor of defendant No. 1. In the course of the argument some cases have been cited from the *Weekly Reporter*, but it is impossible for us to apply the law laid down in those cases because in none of them are the facts stated. We are of opinion that the case of *Dwarika Nath Misser v. Hurish Chunder* (1) is not applicable. In that case it was admitted or found that the defendants had occupancy rights, and the learned Judges of this Court in their judgment proceeding on the Full Bench case, *Narendra Narain Roy v. Isham Chundra Sen* (2), held that it was for the defendant to prove that such right was transferable. There is nothing in that case

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(1) I. L. R., 4 Calc., 925.

(2) 13 B. L. R., 274.

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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).⁴

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.