

mortgagee a right to take possession and hold the land. The question can never arise under the present Tenancy Act, because the provisions of the old Act were amended and now it is settled law that a mortgage of, or attempt to mortgage, an occupancy holding is absolutely null and void. We think that, once we accept the proposition that an occupancy tenant under the Act of 1881, could confer some right upon his mortgagee, the principle which we have mentioned in the earlier part of our judgement at once applies, namely, that the mortgagor cannot, without committing a fraud, do anything which will prejudice the rights of his mortgagee, and that the zamindar once he knows of the existence of the mortgage cannot validly take a surrender from the tenant. The learned Judge of this Court refers to the possible trouble and expense which the tenant might suffer by reason of the fact that he might have to defend a suit or suits for rent. This is a matter which we do not think can be taken into consideration. The tenant ought to have considered the possibility of his suffering any of those things at the time he made the mortgage. We allow the appeal, set aside the decree of the learned Judge of this Court and restore the decree of the lower appellate court.

Appeal decreed.

 1916

 URHIDDU
 v.
 SHOO
 MANGAL
 SINGH.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

PIARI LAL (DECREE-HOLDER) v. MADAN LAL AND OTHERS (JUDGMENT-DEBTORS).*

 1916
 November, 21.

Civil Procedure Code (1908), section 104; order XLIII, rule 1; order XXI, rule 90—Letters Patent, section 10—Appeal from order of a single Judge dismissing an appeal from an order refusing to set aside a sale.

Held that no appeal will lie under section 10 of the Letters Patent from an order of a Single Judge of the High Court dismissing an appeal from an order of an execution court under order XXI, rule 90, of the Civil Procedure Code refusing to set aside a sale.

Naim-ullah Khan v. Ihsan-ullah Khan, followed (1).

THIS was an application under order XXI, rule 90, of the Code of Civil Procedure made by the decree-holder to set aside upon the ground of irregularity and fraud the auction sale in execution of his decree of a cotton ginning factory. The application

*Appeal No. 29 of 1916, under section 10 of the Letters Patent,
 (1) (1892) I. L. R., 14 All., 226.

1916

FIARI LAL
v.
MADAN LAL.

was rejected by the court of first instance (Second Additional Subordinate Judge of Aligarh). Against this order the decree-holder appealed to the High Court. The appeal came before a Bench of two Judges, who differed in opinion, one being in favour of dismissing, the other of decreeing, the appeal. The order of the Court accordingly was an order dismissing the appeal. The decree-holder thereupon filed the present appeal under section 10 of the Letters Patent, from the judgement of the Judge who agreed with the court of first instance.

When the appeal came on for hearing a preliminary objection was raised on behalf of the respondents that no appeal lay from the Court's order dismissing the appeal from the order of the first court dismissing the decree-holder's application.

Mr. *Abdul Raooif* and *Pandit Shiam Krishna Dar*, for the appellant.

Munshi Gulzari Lal, for the respondents.

RICHARDS, C. J., and BANERJI, J:—In this case an application was made in the Court executing the decree to set aside an auction sale on various grounds. The court refused to set aside the sale and dismissed the application. A first appeal from that order was preferred to this Court and heard by a Bench of two Judges, who took a somewhat different view of the evidence. The result was that the opinion of the Judge who concurred with the first court prevailed. The present matter purports to be an appeal under the Letters Patent against the order of this Court. A preliminary objection has been taken to the hearing of the appeal based on the Full Bench decision in the case of *Muhammad Naim-ullah Khan v. Ihsan-ullah Khan* (1). Section 104 of the Code of Civil Procedure provides for the cases in which an appeal shall lie against an "order." Clause (ii) provides that "No appeal shall lie from any order passed in appeal under this section." The contention of the respondent in the preliminary objection is that no second appeal lies and reliance is placed upon the authority quoted to show that even a Letters Patent appeal is not permissible. We are of course bound by the Full Bench ruling of this Court. It is contended, however, that the

words in section 588 of the Code of Civil Procedure, which was in force when the decision in the Full Bench case was given, differed from the words of the present Code. The only difference is that in the old Code the words were "The order passed in appeals under this section shall be final," whereas in the present Code the words are "No appeal shall lie." We cannot see how the change in the words can in any way help the appellant. Possibly the reason for the change is that under the words in the old Code it might have been argued that even a "revision" or a "review of judgement" would not lie against an order passed by an appellate court. We think the preliminary objection must prevail and we accordingly dismiss the appeal with costs.

Appeal dismissed.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
Pranada Charan Banerji.*

BHAGELU SALU AND ANOTHER (JUDGEMENT-DEBTORS) v. RAM AUTAR
SHUKUL (DECREE-HOLDER).*

*Execution of decrees Limitation—Decree conditional on money being paid
into Court "within thirty days of the decree becoming final"—Interpretation
of condition.*

Where a decree was passed in favour of a plaintiff, conditional on his depositing a sum of money into court "within thirty days of the decree becoming final," it was held that this did not signify merely the bare period of limitation for an appeal, but included also the time necessary for obtaining the requisite copies.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case are sufficiently stated in the judgement under appeal, which was as follows:—

"In this case the present appellant had thirty days within which to deposit a certain sum of money from the date of the decree in the suit becoming final. Such decree was made on the 18th of August. The other side being dissatisfied with the decision applied to the court for a copy of the decree and judgement in order to enable them to appeal. At that time in such a hurry were they to appeal that the decree against which they proposed to appeal was not even ready. On the 22nd of August a copy of the judgement was issued to them. On the 31st of August a copy of the decree was issued to them. There is no provision in the Code or in the rules as to when a decree becomes final. In my opinion the real question for determination in this appeal is what is the meaning

*Appeal No. 25 of 1916, under section 10 of the Letters Patent.

1916

PIARI LAL
v.
MADAN LAL.

1916
November,
23.