

person claiming to be entitled to execute a decree, except on the production of a certificate or other authority of the like nature. But it does not follow from that section that an application might not be made without the production of a certificate, the certificate being supplied during the pendency of the proceedings; and this was the view taken by a Division Bench of this Court in the case of *Janaki Bullav Sen v. Hafiz Mahomed Ali Khan* (1).

Under these circumstances we think that this appeal fails and must be dismissed with costs.

C. D. P.

Appeal dismissed.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and
Mr. Justice Ghose.*

PEARI MOHUN MUKERJI (PETITIONER) v. BARODA CHURN
CHUCKERBUTTI AND ANOTHER (OPPOSITE PARTY).

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May 16.

Appeal from Order—Bengal Tenancy Act (VIII of 1885), s. 84, Order made under, not appealable—Acquisition of land by landlord—Civil Procedure Code (Act XIV of 1882), ss. 2, 588.

An order made by a Civil Court under section 84 of the Bengal Tenancy Act is not appealable, not being a decree within the meaning of section 2 of the Code of Civil Procedure, and no appeal being allowed by section 588 of the Code, or by any special provision of the Bengal Tenancy Act.

Goghun Mollah v. Rameshwar Narain Mahta (2) referred to and followed.

THE petitioner applied under section 84 of the Bengal Tenancy Act to the Munsif of Serampore with a view to acquire the raiyati interest in 14 cottahs 12 chittaks of land held by the respondents in his zamindari, and prayed that the proper value of the land might be fixed by the Court, and all necessary orders passed for the transfer of the land in question which was required for the purpose of opening out a new road. In support of his application the petitioner filed the certificate granted by the Collector showing that the purpose above mentioned was reasonable and sufficient. The respondents appeared before the Munsif, and upon evidence being gone into, the Munsif held that the purpose for which the

* Appeal from Order No. 222 of 1891 against the order of J. Crawford, Esq., District Judge of Hooghly, dated the 28th of April 1891, affirming the order of Babu Loke Nath Nundee, Munsif of Serampore, dated the 3rd of April 1891.

(1) I. L. R., 13 Calc., 47.

(2) I. L. R., 18 Calc., 271.

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land was required by the landlord was reasonable and sufficient, and that the acquisition would be for the good of the estate in which the land was comprised. The Munsif came to the conclusion that the sum of Rs. 516-4 would be a fair compensation in respect of the jamai right of the respondents, and ordered them to sell the land for that sum within two months to the petitioner.

Against this order the petitioner appealed to the District Judge, who refused to entertain the appeal for the following reasons :—
“ This purports to be an appeal against an order under section 84 of the Bengal Tenancy Act. Schedule III, part 2, No. 4 of that Act provides the limitation for appeals from orders made under it, but does not determine which of such orders are appealable, nor does section 184 of the Act. Appeals from decrees under the Act are given by section 540 of the Civil Procedure Code, but section 588 of the Code makes no provision for appeals from orders except those made under the Code itself. Section 158 (3) is an example of a case in which the Bengal Tenancy Act provides an appeal from an order under that Act. Section 153 also provides for appeals from certain other orders. I find no provision, however, giving an appeal against orders under the Act generally. The order now in question does not appear to me to come under the definition of ‘ decree ’ in section 2 of the Civil Procedure Code, and regarding it as a mere order, I find no authority for my entertaining an appeal against it.”

Against this order the petitioner appealed to the High Court.

Baboo *Pran Nath Pandit* appeared for the appellant.

Baboo *Opendro Gopal Mitter* appeared for the respondents.

The judgment of the High Court (PETHERAM, C.J., and GHOSE, J.) was delivered by—

PETHERAM, C.J.—The only question which has been argued before us is, whether an order made by the Munsif under section 84 of the Bengal Tenancy Act authorizing the zamindar to acquire a certain portion of the raiyat's holding and fixing a price at which he is to acquire it is appealable under the law.

The point has already been decided in this Court in the case of *Goghun Mollah v. Rameshur Narain Mahla* (1), and it would be

sufficient for us to say that we agree with the mode in which that case was decided. But it may be as well to add that in our opinion it is clear that such an order as this is not a decree within the meaning of the definition in section 2 of the Code of Civil Procedure, because, reading the whole of that section, it is clear, we think, that a decree can only be in a suit, and that this proceeding is not a suit. It not being a decree within that definition, it must be an order, and it remains then only to be seen whether any appeal is given either by section 588 of the Code of Civil Procedure or some special provision of the Bengal Tenancy Act. No appeal is given by section 588, nor is any given by any special provision of the Bengal Tenancy Act, and we think therefore that the Judge was right in deciding that no appeal lay in this case, and that this present appeal must be dismissed with costs.

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Appeal dismissed.

A. A. C.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and
Mr. Justice Ghose.*

MOHIMA CHUNDER BISWAS (PETITIONER) v. TARINI SUNKER
GHOSE (OBJECTOR).*

1892
March 22.

*Appeal—Guardians and Wards Act (VIII of 1890), s. 41—Removal
of guardian—Order refusing to remove a guardian.*

No appeal lies under the Guardians and Wards Act (VIII of 1890) from an order of a District Judge refusing to remove a guardian.

THIS was an appeal from an order dismissing an application of one Mohima Chunder Biswas, who stated in his petition that one Kali Prosonno Ghose Chowdhry, a minor, having lost his parents, Tarini Sunker Ghose, the minor's paternal uncle, obtained in the month of March 1883 a certificate under Act XL of 1858, appointing him guardian of the person and property of the minor; that Tarini Sunker Ghose had neglected the maintenance and education of the minor and was unfit to continue his guardian. The petitioner therefore prayed that Tarini Sunker Ghose might be ordered to file an inventory of the property and an account of the receipts and disbursements of the minor's estate, and that the petitioner, or some other competent person might be appointed

* Appeal from Order No. 227 of 1891, against the order of J. Postford, Esq., Judge of Faridpur, dated the 15th of June 1891.