

Baboo *Srinath Banerjee* and Baboo *Upendro Chunder Bose* for the respondents. 1890

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

DHORA
KAIRI
v.
RAM JEWAN
KAIRI.

The only question for decision in this appeal is whether the defendant appellant can be ejected without notice to quit.

At first sight we were disposed to hold that in accordance with the principles of English law, which have been followed in various decisions of this Court, the lower Courts were right in holding that the defendant by setting up previous to suit a title to the land adverse to that of the plaintiffs, his landlords, forfeited all his rights as a tenant as against the plaintiffs, and was therefore liable to be treated by them as a trespasser, and as such to be evicted without notice. But in a recent decision under the Bengal Tenancy Act it has been held [*Debiruddi v. Abdur Rahim* (1)] that under that Act “in all cases to which it applies, there can no longer be any eviction on the ground of forfeiture incurred by denying the title of the landlord.” We of course follow this decision, and as it has been found by the lower Appellate Court that the defendant was an under-ryot of the plaintiffs, we must hold that he cannot be evicted from his holding except after notice to quit, as prescribed in section 49 (b) of the Bengal Tenancy Act.

This appeal is accordingly decreed, but under the circumstances of the case we make no order as to costs.

A. F. M. A. R.

Appeal allowed.

Before Mr. Justice Pigot and Mr. Justice Macpherson.

JOGENDRONATH BHARATI (JUDGMENT-DEBTOR) v. RAM
CHUNDER BHARATI (DEBTEE-HOLDER).*

1891
June 2.

Execution of decree—Mohunt, decree obtained by, on behalf of muth—Endowment, representation of—Succession Certificate Act (VII of 1889), s. 4.

A decree in favour of a deceased mohunt for costs incurred in proceedings carried on by him on behalf of the *muth* may be executed by the

* Appeal from Order No. 60 of 1891, against the order of R. H. Anderson, Esq, District Judge of Chittagong, dated the 25th November 1890.

(1) I. L. R., 17 Calc., 196.

1891

JOGENDRO-
NATH
BHARATI
v.
RAM
CHUNDER
BHARATI

successor and representative of the mohunt without probate, certificate, or letters of administration being obtained.

ONE Biseshwar Bharati, the mohunt of the Baral Asthan, died in the year 1248 Mughee (1886-87). Upon his death Jogendronath Bharati, the judgment-debtor, set up a will which he alleged had been executed by the deceased mohunt, and applied for probate. The application was opposed by Pancham Bharati, the person claiming to be mohunt, and probate was refused, Pancham Bharati being allowed his costs against the judgment-debtor. Pancham Bharati having died without taking out execution, his son Ram Chunder prayed to execute the decree, not as Pancham Bharati's heir, but as his successor in the mohuntship.

Upon the hearing of the application in the lower Court, it was contended on behalf of the judgment-debtor that the debt was due to Pancham Bharati personally and not as mohunt, and that the application should be rejected as no certificate had been obtained under the provisions of section 4 of the Succession Certificate Act (VII of 1889).

The lower Court held that Pancham Bharati contested the application for probate in his capacity of mohunt; that as against the judgment-debtor it must be taken to have been decided in that case that Pancham Bharati was mohunt of the Baral Asthan and that the judgment-debtor's written statement contained the clearest admission that the debt was due to Pancham Bharati as mohunt. The Court found upon the evidence that Ram Chander duly succeeded his father in the mohuntship, and that he was entitled, as the legal representative of his father, to execute the decree against the judgment-debtor.

The judgment-debtor appealed to the High Court.

Baboo *Nilmadhub Bose*, Baboo *Aukhil Chunder Sen*, and Baboo *Golap Chunder Sircar* appeared for the appellant.

Mr. *R. E. Twidale* appeared for the respondent.

The judgment of the High Court (PIGOT and MACPHERSON, JJ.) was as follows:—

It is difficult to conjecture why this appeal has been brought and fought as it has been. The objection taken in appeal is that the order has gone in favour of allowing the present mohunt, who

is the natural son, and as mohunt the representative, of the deceased mohunt, to take out execution of a decree for costs in favour of the deceased, who contested the probate case in which these costs were incurred by the present appellant; and it is contended that under the fourth section of the Certificate Act this order ought not to have been made, inasmuch as neither probate nor certificate nor letters of administration have been granted to the applicant.

The answer is that these costs were not costs due by the debtor to a person as part of the effects of a deceased person; they were in truth costs due to the *muth* as having been incurred in proceedings carried on on behalf of the *muth*, although in the name of the deceased mohunt. We think that the justice of that contention, and that the truth of it may be properly inferred from all the proceedings, is clear. It is confirmed, if it wants confirmation, by the explicit statement to that effect in the written statement of the judgment-debtor, that the money due under the decree was not due to Pancham personally, but that the money due under the decree belonged to the *Asthan*, and therefore the case does not come within section 4, and the appeal must be dismissed with costs.

Appeal dismissed.

A. A. C.

Before Mr. Justice Pigot and Mr. Justice Banerjee.

GIRINDRO CHUNDER ROY (JUDGMENT-DEBTOR) v. JARAWA
KUMARI AND ANOTHER (DECREE-HOLDERS).*

1891
July 20.

Execution of decree—Decree of Her Majesty in Council—Transfer of decree for execution—Territorial jurisdiction—Civil Procedure Code (Act XIV of 1882), ss. 610, 649, 223.

The effect of sections 610 and 649 of the Civil Procedure Code is that the Court which formerly had, but now no longer has, territorial jurisdiction ought, when the decree is sent to it, to exercise by its own motion, or when applied for, the provisions of section 223 of the Civil Procedure Code, and transfer the decree for execution to the Court which has territorial jurisdiction.

* Appeal from Order No. 133 of 1891, against the order of Babu Kedar Nath Mozoomdar, 2nd Subordinate Judge of Hooghly, dated the 18th April 1891.