

## APPELLATE CIVIL.

*Before Coutts and Das, J.J.*

DARGAHI MIAN

1922.

v.

July, 6.

MUSSAMMAT MANGO KOER.\*

*Bengal Tenancy Act, 1885 (Act VIII of 1885), Schedule III, Article 6—Suit for declaration that landlord entitled to nakdi rent and for recovery of rent—Execution of decree—limitation.*

Article 6 of Schedule III of the Bengal Tenancy Act, 1885, applies to an application for execution of a decree for rent obtained by a landlord against his tenant even though in the suit the landlord also prayed for a declaration that he was entitled to *nakdi* rent.

Appeal by the judgment-debtors.

The plaintiff sued for recovery of rent and for a declaration that the rent of the holding was payable in cash. The suit was decreed. The judgment-debtors objected to execution of the decree on the ground that the application for execution was barred by limitation. The objection was dismissed.

The facts of the case material to this report are stated in the judgment of Das, J.

*Satya Saran Bose* and *Nitai Chandra Ghosh*, for the appellants.

*Nawal Kishore Prasad*, for the respondent.

DAS, J.—This appeal arises out of an order passed by the learned District Judge of Gaya, in an execution matter. The point taken by the judgment-debtor before us is that the execution of the rent decree is barred by the provisions of Schedule 3, Article 6, of the Bengal Tenancy Act. The decree-holder is the landlord and at the time of the rent suit was

\* Appeal from Appellate Order No. 66 of 1922, from an order of J. A. Sweeney, Esq., District Judge of Gaya, dated the 3rd December, 1921, confirming an order of Babu Nilkanta Bagchi, Munsif of Gaya, dated the 28th June, 1921.

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undoubtedly the landlord and the defendant was and is his tenant. The suit was for a declaration that the landlord was entitled to a *nakdi* rent and for a decree for rent. The learned Judge in the Court below has come to the conclusion that as the plaintiff sued not only for arrears of rent but also for a declaration regarding the share of the *bhaoli* rent, the suit was a title suit and the decree was not a rent decree, and consequently Article 6 of Schedule 3 of the Bengal Tenancy Act was inapplicable. I am unable to take the same view. The suit was between landlord and tenant and undoubtedly the provisions of the Act are applicable to them. Further the suit was a rent suit in the strictest meaning of the term, and I do not understand why Article 6 of the third schedule should not apply to the execution of a decree obtained in such a suit just because the landlord asked for a wholly unnecessary declaration in the suit. In my opinion Article 6 of the third schedule of the Bengal Tenancy Act did apply to the application for execution of the decree and the learned District Judge should have dismissed the application for execution.

I would allow the appeal, set aside the orders passed by the Courts below and dismiss the execution petition of the respondents with costs.

Courts, J.—I agree.

*Appeal allowed.*

## APPELLATE CIVIL.

*Before Courts and Das, J.J.*

SIBANAND MISRA

v.

JAGMOHAN LALL.\*

*Transfer of Property Act, 1882 (Act IV of 1882), section 74—suit by puisne mortgagee and purchaser of mortgaged*

\* Appeal from Appellate Decree No. 542 of 1921, from a decision of G. Rowland, Esq., District Judge of Gaya, dated the 22nd December, 1920, affirming a decision of M. S. Hasan, Subordinate Judge of Gaya, dated the 17th December, 1919.

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