the view that the right to apply accrues on the date of the final decree or order of the appellate Court where there is an appeal from the decision of the Court of first instance. Now the essential character of an application which follows a preliminary decree for sale remains the same, though the provisions as to mortgage suits have been removed from the Transfer of Property Act to the Civil Procedure Code, and the order passed on such an application is now called a decree for sale and not an order for sale. The change effected by the Code of 1908, was a change in procedure so as to shut out such contentions as used to be raised that such applications were not under the provisions of the Civil Procedure Code. Neither the Civil Procedure Code of 1908 or the Limitation Act of 1908 has answered the question, when the right to make the application accrues. That being so, we are, I think, entitled, by analogy, to apply the provision of Article 179, third column, in answering the question, when the right to apply accrues. As I have said before the question is not free from difficulty; but, on the whole, I think, with great respect, that the view of Banerji, J., in the case I have cited is right.

I must dismiss this appeal with costs.

ADAMI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Ross, J.J.

INDRA CHAND BOTHRA,

v.

SURENDRA NARAYAN SINGH.*

1922.

March, 24.

Rent Decree -sale of patni *in execution of money decree—whether purchaser personally liable to satisfy rent decree obtained by landlord against* patnidar.

* Appeal from Original Order No. 226 of 1920, from an order of Jadu Nandan Prashad, Esq., District Judge of Purnea, dated the 6th October, 1920.

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The purchaser of the interest of a *patnidar* in execution of a money decree obtained against the latter is not personally liable to satisfy a rent decree obtained by the landlord against the *patnidar* prior to the sale in execution of the money decree. Therefore the holder of the rent decree is not entitled to execute the rent decree against the said purchaser after the latter has parted with his interest in the *patni*.

Sreemutty Jogemaya Dassi v. *Girindra Nath Mukherjee*(1) and *Nanku Prasad Singh* v. *Kamta Prasad Singh*(2), referred to.

The facts of the case material to this report were as follows :—

Dhanpat Singh, father of decree-holder No. 1, was the *zamindar* of pargana Haveli. Chatterpat Singh, nephew of Dhanpat Singh and father of Sripat Singh and Jagpat Singh, judgment-debtors, held a *patni taluk*, Sahebganj, under Dhanpat Singh, in Pargana Haveli. The *patnidar* granted a *durpatni* lease of portions of his *patni mahal* to A. J. Forbes.

In 1893, Dhanpat Singh conveyed his *zamindari* interest in the whole of pargana Haveli to Musammat Bhagwanbati Chaudhrain and subsequently sued the *patnidar* for arrears of *patni* rent which had accrued due prior to the transfer to Musammat Bhagwanbati. He obtained a decree on the 10th July, 1896.

On or about the 19th July, 1896, Dhanpat Singh executed a deed of trust in favour of Gopi Chand Bothra (father of Inder Chand Bothra, decree-holder No. 2), Kirath Chand Sriman, decree-holder No. 3 and Surai Kumar Adhikari, decree-holder No. 4, in respect of all his properties, including the decree of 1896, for the benefit of his son Maharaj Bahadur Singh. Dhanpat Singh died on the 21st July, 1896, leaving his son as his sole heir and beneficiary under the trust.

In 1897, the trustees applied for execution of the decree of 1896, against the *patnidar*.

In 1900, the *patnidar* again defaulted in the payment of rent, and Musammat Bhagwanti took steps

(1) (1899-1900) 4 Cal. W. N. 590. (2) Unreported.

for recovery of the arrears under the Bengal *Patni Taluks* Regulation, 1819. The *darpatnidar* deposited the amount due and the sale was stopped and the *darpatnidar* was put in possession of the *patni mahal* under section 13(4) of the Regulation.

In 1902, Surendra Narain Singh, the present objector, purchased the *patni mahal* in execution of a money decree obtained against the *patnidar* and his mother. He obtained symbolical possession of the *patni mahal* on the 18th May, 1903.

In 1904, the trustees again applied for execution of the decree of 1896 and sought to attach the *patni* tenure. Surendra Narain Singh objected that inasmuch as Dhanpat Singh had not obtained the decree for rent until after he had parted with his *zamindari* interest, the decree of 1896 was not a rent decree and, therefore, the *patni mahal* could not be sold in execution of it. This objection was disallowed by the Subordinate Judge whose decision was upheld by the Calcutta High Court.

In 1905, Surendra Narain Singh instituted Suit No. 169 of 1905 for a declaration that the decree of 1896 was a money decree and not a rent decree. The suit was dismissed by the Subordinate Judge on the 23rd July, 1906, and this decision was upheld by the Calcutta High Court on the 8th April, 1908. The 6th August, 1906, had in the meantime, been fixed as the date for sale of the *patni* tenure.

In 1906, the *darpatnidar* instituted suit No. 197 of 1906, for a declaration that the decree of 1896 was a money decree and not a rent decree. The Subordinate Judge, decreed the suit on the 14th September, 1906. The parties appealed to the Calcutta High Court and the decree was set aside.

Surendra Narain Singh preferred an appeal to the Privy Council from the High Court's decision in suit No. 169 of 1905. This appeal was dismissed for default.

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Forbes preferred an appeal to the Privy Council from the High Court decision in suit No. 297 of 1906 and obtained a declaration that the decree of 1896 was a money decree and not a rent decree.

On the 1st May, 1908, the trustees again applied for execution of the decree of 1896 and, on the 8th July, 1908, the *patni mahal* was sold in execution of that decree to Forbes who purchased it in his personal capacity. Subsequently the sale was set aside on the objections of Surendra Narain Singh under section 311 of the Code of Civil Procedure, 1882, and of Forbes under section 313.

On the 23rd January, 1915, Surendra was brought on the record as a judgment-debtor and notices under Order XXI, rule 22, were ordered to be issued. Surendra filed objections on the 27th March, 1917.

In the meantime Forbes had instituted a suit against Surendra for recovery of the money deposited by him in 1900, and on the 18th May, 1916, he obtained a decree for Rs. 57,166 which provided that if Surendra failed to pay the decretal amount to Forbes, the *patni* itself should be sold. The amount was not paid and the *patni* was put up for sale and purchased by Forbes for Rs. 2,000, on the 3rd July, 1917.

On the 23rd November, 1918, the decree-holders filed a fresh list of properties belonging exclusively to Surendra, and requested the court to issue attachment in respect of the properties. Attachment was accordingly issued and the 4th October, 1920, was fixed for the sale.

On the 6th October 1920, Surendra's objection of the 27th March, 1917, was considered by the court. The Subordinate Judge held (*i*) that as between the decree-holders and Surendra the decree of 1896 was a rent decree; and (*ii*) that the personal properties of Surendra were not liable in execution of that decree. The attachment was therefore raised.

The decree-holders appealed to the High Court.

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Manuk (with him *Chandra Sekhar Banerjee*), for the appellants.

P. K. Sen (with him *C. M. Agarwala* and *Baikuntha Nath Mitter*) for the respondent.

DAS, J.—All the material facts giving rise to this appeal are stated with precision in the judgment of the learned Subordinate Judge; and, when these facts are properly understood, the point which we have to decide in this appeal arises free from all complications. The point is this: whether the appellant, who in 1896 obtained a decree for rent against one Chatrapat Singh in respect of a *patni mahal* known as Lot Sahebgunj situate within the ambit of the appellants' *zamindari* known as pargana Haveli, is entitled to execute the decree against the respondent who, in September 1902, purchased the right, title and interest of Chatrapat Singh in the *patni mahal*, notwithstanding the fact that prior to the institution of the proceedings, which have given rise to this appeal, the *patni mahal* passed from the hands of the respondent into the hands of one Forbes. The learned Subordinate Judge has found against the appellants on the main question that was argued before him. In my opinion, the decision of the learned Subordinate Judge is right and ought to be affirmed.

Dhanpat Singh was the *zamindar* of pargana Haveli. As I have said before, Chatrapat Singh was the *patnidar* of Lot Sahebgunj situate within pargana Haveli. Mr. Forbes held a *darpatni* interest under Chatrapat Singh. Dhanpat Singh died on the 21st July, 1896, and the appellants are the trustees of his estate under a deed of trust executed by Dhanpat prior to his death.

On the 27th June, 1893, Dhanpat Singh sold pargana Haveli to Musammat Bhagwanbati. On the 21st September, 1893, he instituted a suit against Chatrapat for recovery of rent that accrued due to him prior to the 27th June, 1893. On the 10th July, 1896, the Calcutta High Court passed a decree in favour of Dhanpat as against Chatrapat. In 1900, Chatrapat

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failed to pay the *patni* rent to the new landlord, Musammat Bhagwanbati. The lady took proceedings under the *Patni* Regulation, whereupon Mr. Forbes, for the protection of his *darpatni* interest, deposited the rent in full and took possession of the *patni mahal*, under section 13(4) of the *Patni* Regulation. In September, 1902, the respondent purchased the *patni mahal* in execution of a money decree against Chatrapat and became liable by such purchase to make good to Mr. Forbes the money deposited by him in the proceedings instituted by Musammat Bhagwanbati against Chatrapat. The position in September, 1902, was therefore this: there was a decree for rent against Chatrapat Singh; but the *patni mahal* in respect of which the rent decree had been obtained was then the property of the respondent, though Mr. Forbes, the *darpatnidar*, was actually in possession of the *patni mahal* under section 13(4) of the *Patni* Regulation. It is obvious that both Mr. Forbes and the respondent were interested in resisting the execution proceedings which had been started by the appellants against Chatrapat Singh in 1897, and they resisted the execution proceedings on the ground that the decree that had been obtained by Dhanpat against Chatrapat was a money decree and not a rent decree. It will be necessary now to trace the history of the execution proceedings; but, before doing so, I should mention that Mr. Forbes instituted a suit as against the respondent for recovery of the money which had been deposited by him in the proceedings taken by Musammat Bhagwanbati under the Regulation, against Chatrapat, and that on the 18th May, 1916, he got a decree as against the respondent for Rs. 57,166, the decree providing that, if the respondent failed to pay the decretal amount to Mr. Forbes, the *patni* itself should be sold. The respondent failed to satisfy Mr. Forbes' decree, and, as a result of his failure, the *patni* was put up for sale on the 3rd July, 1917, and was purchased by Mr. Forbes for Rs. 2,000. It is necessary to remember that the respondent was at no time in possession of the *patni* and that the title to

the *patni* which had accrued to the respondent in September, 1902, by virtue of his purchase in execution of a money decree against Chatrapat, passed away from him on the 3rd July, 1917.

I now come to the execution proceedings; and it will appear that the question whether the decree that had been obtained by Dhanpat against Chatrapat was a rent decree or a money decree was early raised and was long debated. The point arose on the admitted fact that Dhanpat brought his suit for arrears of rent against Chatrapat after he had parted with all his interest in the *zamindari* in favour of Musammat Bhagwanbati; and, as will presently be seen, it was contended, first, on behalf of Chatrapat, then on behalf of the respondent, and lastly on behalf of Forbes, that the right to proceed for sale under section 65, Bengal Tenancy Act, was dependent on the existence of the relationship of landlord and tenant at the time when the remedy provided by law was sought to be enforced, and that as the appellants were not the landlords at the time they started the execution proceedings, they were not entitled to execute the decree as a rent decree. In 1897, the appellants started execution proceedings against Chatrapat, and the objection put forward on behalf of Chatrapat to the execution of the decree as a rent decree, was rejected by the Courts in India. The execution proceedings, however, for some reason which has not been made clear to us, failed to produce any result, and in 1904, the appellants presented another application for execution. The respondent, who was now the *patnidar*, objected that the decree was a money decree and not a rent decree, and that the *patni* was not liable to be sold in execution of that decree. A similar objection was put forward on behalf of Mr. Forbes, who also insisted that, having deposited the amount of the arrears under section 13 of the Regulation in the proceeding commenced by Musammat Bhagwanbati against Chatrapat, he had a first charge on the *patni* for the sum so deposited by him. The objections were disallowed by the Courts in India. In 1905, the respondent instituted a suit for

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a declaration that Dhanpat's decree against Chatrapat was a money decree and that the *patni* could not be sold in execution of that decree. The Courts in India decided against the contention of the respondent, the date of the decision of the High Court being the 8th April, 1908. The respondent then applied for, and obtained, leave to appeal to His Majesty in Council, but that appeal subsequently failed for non-prosecution. Mr. Forbes also instituted a similar suit and, though the Courts in India decided against him, he carried his appeal to the Judicial Committee where his contention prevailed. By its decision, which was pronounced on the 4th March, 1914, [*Forbes* v. *Maharaj Bahadur Singh* (1)], the Judicial Committee held that the right to bring the tenure to sale under section 65, Bengal Tenancy Act, exists only so long as the relationship of landlord and tenant exists, and appertains exclusively to the landlord, and that a person to whom rents are due and who obtains a decree for them after he has parted with the property on which the tenancy is situate, has no such right. The position then is this: as between the appellants and Mr. Forbes, the decree must be regarded as a money decree and not as a rent decree: but as between the appellants and the respondent, the decree must be regarded as a rent decree.

It is not necessary to follow the fortunes of the different execution proceedings that were from time to time commenced by the appellants. I come to the application of the 22nd January, 1915, when the appellants applied to have the decree treated as a money decree and the respondent added as a judgment-debtor. It will be remembered that the position then was that the respondent was the *patnidar* and Mr. Forbes was the *darpatnidar* in actual possession of the *patni mahal*. On the 19th March, 1915, the appellants presented another application to the execution Court. They stated in their petition that the Judicial Committee had held that the decree obtained by them against

(1) (1914) I. L. R. 41 Cal. 926, P. C.

Chatrapat was a money decree. They submitted that it was not possible to recover the amount of the decree without proceedings against the properties other than that in respect of which the decree had been obtained, and they applied for attachment and sale of certain properties belonging to Chatrapat. This application was presented on the 19th March, 1915; but it will be remembered that they had already on the 22nd January, 1915, applied to have the respondent added as a judgment-debtor in the execution proceedings. On the 27th March, 1915, the respondent objected to being added as a judgment-debtor. He contended that, as he was neither the judgment-debtor nor the legal representative of Chatrapat, the decree-holders could not proceed against the *patni mahal* in his hands. Before this application was heard and disposed of the *patni mahal* passed into the hands of Mr. Forbes. The decree-holders abandoned their application of the 19th March, 1915, and, on the 23rd November, 1918, they presented an application for attachment and sale of certain properties belonging to the respondent. It is this application which has given rise to this appeal.

Mr. *Manuk*, on behalf of the decree-holders appellants, contends that the decree obtained by Dhanpat Singh against Chatrapat Singh must be regarded as a rent decree so far as the respondent is concerned and that it was open to him to proceed against the *patni mahal* in the hands of the respondent. I have no doubt whatever that had the appellants proceeded against the respondent at any time between September 1902 and July 1917, during which period the title to the *patni mahal* was in the respondent, there could be no answer to the claim of the decree-holders. It having been held in proceedings between the appellants and the respondent that the decree obtained by Dhanpat was a rent decree, the appellants had a charge on the tenure so long as the tenure was in the hands of the respondent, and it was plainly impossible for the respondent to resist the claim of the appellants. But the tenure has now passed from the hands of the respondent to the hands of Mr. Forbes. Mr. *Manuk*

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contends that if the respondent has allowed the tenure to go into the hands of a third party, he must be personally liable for the decree. In my opinion, there is neither principle nor authority for this contention. It was, in my opinion, open to the decree-holders to proceed against the tenure in the hands of Mr. Forbes. It was argued by Mr. *Manuk* that he could not take this course having regard to the decision of the Judicial Committee in the suit between the appellants and Mr. Forbes that the decree was a money decree. That may be so; but Mr. Forbes, as the purchaser of the *patni mahal* from the respondent, was in an entirely different position. As the representative in interest of the respondent, Mr. Forbes would be bound by the decision in the suit as between the appellants and the respondent. By that decision the decree was held to be a rent decree and as involuntary alienations stand on the same footing as voluntary alienations, the appellants could, in my opinion, follow the *patni mahal* in the hands of whomsoever it might be under a title derived from the respondent.

Mr. *Manuk* next contends that the respondent must be regarded as the representative in interest of Chatrapat Singh and is therefore personally liable to satisfy the decree obtained against Chatrapat Singh. In my opinion, there is no warrant for the proposition. The decree was not obtained against the respondent. It may be that, as the result of the litigation between the appellants and the respondent, it must now be held that so long as the *patni mahal* was in the hands of the respondent there was a charge upon the *patni mahal* for the decretal claim of the appellants against Chatrapat Singh. But it has been held that a transferee of a tenure is not personally liable for rent which accrued due prior to the transfer [See *Sreemutty Jogemaya Dassi* v. *Girindra Nath Mukherjee* (1)]. The recent decision of the Judicial Committee in the case of *Nanku Prasad Singh* v. *Kamta Prasad Singh*(2), pronounced on the 19th January, supports this

(1) (1899-1900) 4 Cal. W. N. 590. (2) Unreported.

contention. That was a case in which it was sought to make the purchasers of mortgaged properties personally liable for the mortgage debt. The Judicial Committee, in a very short judgment, said as follows, "Their Lordships have considered this case, and they think it is clear that no personal liability was incurred by the purchasers of the equity of redemption, who, their Lordships understand are defendants Nos. 2 to 11, of whom only five are respondents here. Their Lordships therefore think that the decree of the High Court was right and that the point made by the appellant fails". The position occupied by the respondent is in no way different from the position which a purchaser of the equity of redemption occupies. The utmost that can be said in favour of the appellants is that they had a charge upon the tenure in the hands of the respondent. The respondent was the purchaser of the tenure which was already subject to a charge in favour of the appellants. He is in the same position as the purchaser of an equity of redemption, and, in my opinion, no personal liability was incurred by him by such purchase.

In my opinion the decision of the learned Subordinate Judge is right and must be affirmed. I would dismiss this appeal with costs.

ROSS, J.—I agree.

Appeal dismissed.

LETTERS PATENT.

Before Dawson Miller C. J. and Adami, J.

BISHUN PRAGASH NARAYAN SINGH

v.

ACHAIB DUSADH.*

1922.

March. 27.

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *section* 52(1) (*a*)—*Additional rent, whether landlord entitled to, when*

* Letters Patent Appeal No. 24 of 1921.