

## APPELLATE CIVIL.

Before Das and Adami, JJ.

NIDHI PARIDA

v.

KARUNAKAR PADHAN. \*

1921

November, 26

*Occupancy holding, non-transferable—compromise of rent suit, by agreement that plaintiff should sell defendant's holding on non-realisation of decretal amount—amount not paid—attachment of holding—objection by judgment-debtor that holding not transferable—Waiver.*

Where a suit for the rent of a holding consisting of *pahi* land was compromised upon condition that in the event of the defendant not paying the decretal amount within the specified time the decree-holder would be entitled to sell the holding, *held*, that the defendant could not subsequently object to the sale of the holding on the ground that it was not transferable without the landlord's consent.

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

A suit for recovery of rent was compromised. It was stipulated in the compromise that if the defendant did not pay the decretal amount within a specified time the decree-holder would be entitled to sell defendant's holding. The decree not having been satisfied the decree-holder attached the holding. The judgment-debtor objected that as the holding was *pahi* land it was not liable to sale. The court allowed this objection to prevail and set aside the attachment. The decree-holder appealed to the District Judge who reversed the decision of the trial court.

The judgment-debtor appealed to the High Court.

*G. C. Ray*, for the appellant.

*B. N. Das*, for the respondent.

DAS, J.—The only point that has been argued before us is that there was no waiver of the legal right of the petitioner. In my opinion there was. He did

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\*Circuit Court, Cuttack. Appeal from Appellate Order No. 14 of 1920, from an order of D. H. Kingsford, Esq. District Judge of Cuttack, dated the 18th March, 1920, modifying an order of Babu Nand Kishore Choudhury, Munsif of Kandrapara, dated the 13th September, 1919.

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compromise the suit on an agreement that in default of payment of the decretal money, the decree-holder would be entitled to realize the sum by the sale of the attached holding. There was a clear representation made to the decree-holder that his occupancy holding was attachable by the judgment-debtor. The decree-holder acted upon that representation and changed his position to his detriment. In my opinion the judgment-debtor must make good his representation.

This application is dismissed with costs.

ADAMI, J.—I agree.

*Application dismissed.*

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APPELLATE CIVIL.

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*Before Das and Adami, JJ.*

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LAKSMAN SAHU,

v.

GOKHUL MAHARANA.\*

1921  
 December, 1.

*Attestation—mortgage bond—one attesting witness dead and the other's evidence not in support of attestation—proof of execution—Evidence Act, 1872 (Act I of 1872), section 71.*

Where one of the attesting witnesses to a mortgage bond was dead at the time of the suit, and the other stated that he had attached his signature to the document without knowing what it was and without witnessing its execution, *held*, that the plaintiff was entitled, under section 71 of the Evidence Act, 1872, to succeed on the bond on proof of its due execution.

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

Plaintiff sued on a mortgage bond, the consideration for which was a loan of Rs. 100, alleged to have been executed by the father of defendants 1 and 2. Defendant No. 3 was a subsequent purchaser of the property. Of the two attesting witnesses one was dead

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\*Circuit Court, Cuttack. Appeal from Appellate Decree No. 31 of 1921 from a decision of D. H. Kingsford, Esq., District Judge of Cuttack, dated the 27th April, 1921, reversing a decision of Babu Bibhuti Bhushan Mukherji, Munsiff, of Cuttack, dated the 30th April, 1920.