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on account of the decretal sum together with the sum of Rs. 200 on account of intermediate interest, that is to say a total sum of Rs. 6,800 on or before the 10th July, full satisfaction will be entered in respect of the claim as provided by the compromise decree and that on default the terms of the said decree will be duly enforced according to law.

There will be no order as to costs.

BUCKNILL, J.—I agree.

APPELLATE CIVIL.

Before Mullick and Foster, J.J.

K. B. DUTT
v.
TARAPRASANNA ROY CHAUDHURY.*

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July, 6.

Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 39, *Order XXI*, *rule* 6—*transfer of decree—application for execution must be made in court to which decree transferred.*

Under Order XXI, rule 6, read with section 39, Civil Procedure Code, where there has been no application for the execution of the decree in the court which passed the decree, the decree-holder is bound to make an application for execution in the court to which the decree has been transfereed, but when an application for execution of the decree has already been made in the court which passed the decree it is not necessary for the decree-holder to make a second application in the court to which the decree has been transferred.

Therefore, where, on the request of the decree-holder, the court which passed the decree sent it for execution to another court, together with a certificate of non-satisfaction, but omitted to order the execution of the decree or to give a certificate that no order had been made for the same, *held*, that it was not necessary for the decree-holder to make an application for execution of the decree in the court to which

* Appeal from Original Order No. 237 of 1923, from an order of Babu Ashutosh Mukharji, Subordinate Judge of Dhanbad, dated the 31st July, 1922.

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the decree was transferred as it appeared that an application for execution had in fact been made in the court which passed the decree.

Suja Hussain v. *Monohur Das*(1) and *Nilmony Singh Deo* v. *Biressur Banerjee*(2), referred to.

Appeal by the applicant.

On the 28th April, 1910, the appellant obtained a decree in the Court of the Subordinate Judge of Dacca for a certain sum of money. The present application was made by the decree-holder to the Subordinate Judge of Dacca on the 21st April, 1922. It appeared that the application was duly registered and notice was issued under Order XXI, rule 22, Code of Civil Procedure, upon the judgment-debtor to show cause why the execution should not proceed, a period of more than one year having elapsed since the last execution. On the 25th April the decree-holder filed a petition requesting that the decree and a certificate of non-satisfaction should be sent to the District Judge of Manbhum. On the 29th April the certificate was duly despatched to the Court of the Subordinate Judge of Manbhum without any adjudication on the question of limitation. The Subordinate Judge of Dacca was doubtful whether he was competent to keep the execution proceeding pending on his file, but after hearing the decree-holder he adjourned the case till the 29th July, 1922. It appeared that the certificate reached the Subordinate Judge of Manbhum, either on the 6th or on the 8th May, 1922, and there was an order, dated the 8th May, 1922, by the Subordinate Judge of Dhanbad who was the Subordinate Judge of Manbhum with the necessary territorial jurisdiction, to the following effect:

"Decree-holder states, as ordered, that the Execution Case is pending at Dacca. Register and issue notice under Order XXI, rule 22, fixing 25th May for return."

On the 6th June, 1922, the judgment-debtor filed an objection on the ground that the decree was barred by

(1) (1895) I. L. R. 22 Cal. 921. (2) (1889) I. L. R. 16 Cal. 744.

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limitation, more than twelve years having elapsed since the decree was made. On the 31st July, 1922, the Subordinate Judge made an order accepting the objection of the judgment-debtor and dismissing the application for execution on the ground that it was barred under section 48, Code of Civil Procedure.

The present appeal was preferred against that order.

Saroshi Charan Mitter and *Bankim Chandra De*, for the appellant.

Abani Bhushan Mukerji and *B. B. Mukerji*, for the respondent.

MULLICK, J. (after stating the facts, as set out above, proceeded as follows) :—

The question is, what was the nature of the application before the Subordinate Judge of Dacca? Was it merely an application for the transfer of the decree or an application for the execution of the decree? If it was merely an application for the transfer of the decree, then it was necessary for the decree-holder to file an application for the execution of the decree in the Court of the Subordinate Judge of Manbhum. A distinction was drawn between an application for mere transfer and an application for the execution of a decree in *Suja Hossein* v. *Monohur Das*(1) and *Nilmony Singh Deo* v. *Biressur Manerjee*(2), and there is really no difficulty as to the law. Now, the application in question here is not before us and we can only draw inferences from the proceedings of the Subordinate Judge himself. It appears that he registered the application under Order XXI, rule 11, Code of Civil Procedure, and issued a notice under Order XXI, rule 22, after doing so. We must presume therefore that the Subordinate Judge was acting according to law and that the application was in form and in substance an application for the execution of the decree; and so it has been held to be by the learned

(1) (1895) I. L. R. 22 Cal. 921. (2) (1889) I. L. R. 16 Cal. 744.

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Subordinate Judge of Dhanbad also. Only that officer was under the impression that notwithstanding the application in the Court of the Subordinate Judge of Dacca it was necessary for the decree-holder after the transfer of the decree to make another application in the Court at Dhanbad. In my opinion there is no warrant in law for this view. Order XXI, rule 6, read with section 39, makes it quite clear that where there has been no application for the execution of the decree in the Court which passed the decree, the decree-holder is bound to make an application for execution in the Court to which the decree has been transferred; but I can find nothing in the law which compels the decree-holder to make a second application for the execution of the decree in the Court to which the decree has been transferred, if he has already made an application in the Court which passed the decree. It is to be noted here that the Subordinate Judge of Dacca, although he complied with the law in issuing a certificate of non-satisfaction as required by section 39, omitted either to order the execution of the decree or to give a certificate that no order had been made for the same. The omission was wrong, but it did not give rise to any obligation upon the decree-holder to file any such application for execution in the Court of the Subordinate Judge of Dhanbad. If then it was not necessary for the decree-holder to file a fresh application the Subordinate Judge should, upon an application for the arrest of the judgment-debtor and the attachment of his properties, have proceeded to execute the decree and the dismissal of the case was, in my opinion, wrong.

There was some argument before us as to whether this was an application for the continuation of the proceedings which had already been instituted in the Court of the Subordinate Judge of Dacca and we were asked to compare the reliefs claimed before the Subordinate Judge of Dhanbad with the reliefs claimed before the Subordinate Judge of Dacca. In the absence of the application before the Subordinate

Judge of Dacca we are not able to make this comparison, nor is it necessary to do so in the view which I take of the matter.

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The appeal will, therefore, be decreed with costs.

FOSTER, J.—I agree.

Appeal decreed.

APPELLATE CIVIL.

Before Mullick and Bucknill, J.J.

SHEOGOBIND RAM SAHU
v.
MAHIPAT DUSADH.*

1923.

July, 9.

Zerait—lease of—tenant inducted by lessee, whether can acquire occupancy rights—Bengal Tenancy Act, 1885 (*Act V of* 1885), *section* 20.

Where a lessee of *zerait* land is not restricted by the terms of his lease from settling the land with a tenant and the land is in fact legally settled with a tenant by the lessee, the tenant holds as a *raiyat* within the meaning of section 20 of the Bengal Tenancy Act, and when he has so held for 12 years his occupancy right is complete.

Binad Lal Pakrashi v. *Kalu Pramanik*(1), referred to.

Jogendra Singh v. *Maharaja Kesho Prasad Singh*(2), distinguished.

Appeals by the plaintiffs.

The facts of the case material to this report are stated in the judgment of the Court.

Lachmi Narain Sinha (for *Tribhuan Nath Sahai*), for the appellants.

Baikuntha Nath Mitter, for the respondents.

* Second Appeals Nos. 1088 to 1092 of 1921, from a decision of Babu Jatindra Chandra Bose, Subordinate Judge of Saran, dated the 15th April, 1921, reversing a decision of Babu Charu Chandra Mitra, Munsif of Sewan, dated the 24th July, 1920.

(1) (1893) I. L. R. 20 Cal. 708, F.B. (2) (1922) I. L. R. 1 Pat. 764.