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to take out further execution for that portion of his purchase money which is represented by the property purchased by him. It seems to me that execution comes to an end with the sale of the property and that whether or not the auction-purchaser obtains possession of the property sold is wholly immaterial for the purpose of the decree and it does not in any way affect it. Mr. Justice Banerji pointed out in the case of *Bhagwati* v. *Banwari Lal* (1) that if the decree-holder purchases the property but does not obtain possession that circumstance would not entitle him to take out execution of the decree which has already been satisfied. It seems to me that the arguments advanced before us by Mr. *Baikuntha Nath Mitter*, on behalf of the judgment-debtors, must prevail. The argument is founded on principle and is covered by the decision of this Court in *Haji Abdul Gani* v. *Raja Ram* (2) which is binding on us.

I would dismiss this appeal with costs.

ADAMI, J.—I agree.

*Appeal dismissed.*

## CRIMINAL REFERENCE.

*Before Mullick and Bucknill, JJ.*

JHARU LAL

*v.*

MAHANTH MADAN DAS.*

1922.

*Nov., 7.*

*Code of Criminal Procedure (Act V of 1898), sections 195 and 439—Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act IV of 1914)—Certificate Officer, forged application to, for payment of surplus proceeds—sanction, whether necessary for prosecution of forgers—revision, whether High Court may direct subordinate court to refrain from prosecution.*

* Criminal Reference No. 66 of 1922, by Jadunandan Prasad, Esqr., Sessions Judge of Purnea, dated the 8th August, 1922.

(1) (1909) I. L. R. 31 All. 82, F. B. (2) (1916) 1 Pat. L. J. 232, F.B.

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*Semble.*—That section 439 of the Criminal Procedure Code, 1898, does not authorise the High Court to direct a subordinate court to retrain from trying an accused person against whom such court has issued process.

Proceedings before the Certificate Officer under the Bihar and Orissa Public Demands Recovery Act, 1914, terminate when the sale has been held and the proceeds realised. The only proceeding of a judicial nature contemplated by the Act after realization of the sale proceeds is an inquiry under section 32(2) in cases in which the certificate-debtor disputes a claim made by the certificate-holder to receive any amount which might be due to him under section 32(1)(*c*).

Therefore, where a *mahal* belonging to several co-sharers having been sold under the Act, the surplus sale proceeds were paid to a *mukhtar* who had filed an application in that behalf purporting to be signed by all the co-sharers, and, thereafter, some of the co-sharers lodged a complaint before the Magistrate stating that their names had been forged on the application by the other co-sharers, and praying that process should issue against them under sections 468 and 471, Penal Code, *held*, that the surplus sale proceeds not having been entrusted to the Certificate Officer in his capacity as a court, sanction for the prosecution of the alleged forgers was not necessary.

Under the Act a verbal application for payment of the surplus sale proceeds is sufficient.

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

*K. N. Chowdhury* (with him *S. P. Sen*), for the petitioner.

*H. L. Nandkeolyar*, Assistant Government Advocate, for the Crown.

MULLICK, J.—Mahanth Madan Das and his wife and the petitioners Jharu Lal and Baijnath Chowdhury were co-sharers in Mahal Amirpur Hardas which was sold by the Collector of Purnea for arrears of road cess under the Public Demands Recovery Act and after paying the Government demand a surplus of Rs. 126 was lying in deposit in the Purnea Collectorate to the credit of the certificate debtors. On the 5th September, 1921, a *mukhtar* named Basdeo Narain filed

a *mukhtarnama* purporting to have been executed in his favour by all the debtors including Madan Das and his wife and he drew out the whole amount of Rs. 126 from the Collectorate. On the 12th June, 1922, Madan Das lodged a complaint before the Magistrate of Purnea, stating that Jharu Lal and Baijnath had forged his name and that of his wife on the *mukhtarnama* and praying that process should issue against them for offences under sections 468 and 471, Penal Code.

The Magistrate after calling for a report from the Certificate Officer issued process as prayed for. Thereupon Jharu Lal and Baijnath moved the Sessions Judge in order that the case might be referred to this Court under section 439, Criminal Procedure Code, and the Sessions Judge has done so on the ground that there being no sanction by the Certificate Officer under section 195, Criminal Procedure Code, for the prosecution of the petitioners the proceedings must be quashed.

Apart from the objection that section 439 does not seem to authorize the Court to direct a subordinate Court to refrain from trying an accused against whom he has issued process, I think on the merits, the present application must fail. The application of the 29th June, 1922, was not, in my opinion, made to the officer entrusted with the custody of the surplus sale proceeds in his capacity as a Court. The certificate proceedings terminated after the sale of the property and the deposit of the money, and thereafter it seems that it was open to any ministerial officer of the Court to return the money to the persons entitled under proper safeguards. The only proceeding of a judicial nature which the Public Demands Recovery Act contemplates after the deposit of the money is an inquiry by the Certificate Officer under section 32 (*2*) where the certificate debtor disputes a claim made by the certificate holder to receive any amount which might be due to him under section 32 (*1*) (*c*). It does not seem that it was necessary for the *mukhtar* to institute any proceeding at all for the withdrawal of the money.

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A verbal application would have sufficed and in the present case the officer who directed the refund of the money was not, in my opinion, acting as a Court or disposing of any proceeding required by the Act.

MULLICK, J.

In these circumstances the sanction required by section 195 was not necessary and the reference cannot be accepted.

BUCKNILL, J.—I agree.

## APPELLATE CIVIL.

*Before Dawson Miller, C. J. and Ross, J.*

1922.

*Nov., 7.*

RAMCHARAN SINGH

*v.*

SHEO DUTTA SINGH.*

*Court-Fees Act*, 1870 (*Act VII of* 1870), *section* 7(xi)(cc)—*Suit to eject* thikadar *on expiry of lease.*

A suit to eject a *thikadar* after the expiry of his lease falls within section 7(*xi*)(*cc*) of the Court-Fees Act, 1870.

All cases in which the landlord seeks to recover property from a person who has been his tenant and whose tenancy has come to an end, and cases in which the landlord is entitled to enter by reason of some breach of covenant, are governed by section 7(*xi*)(*cc*).

The word "tenant" in clause (*cc*) includes a person to whom that description would apply immediately before the commencement of the suit but who is liable to ejectment by reason of the termination of his tenancy.

Appeal by the defendant.

The plaintiffs sued in the Court of the Munsif to eject the defendant, who was a *thikadar*, on the expiry of his lease, and, treating the suit as one for the recovery of immoveable property from a tenant holding over after the determination of the tenancy, valued the

* Second Appeal No. 761 of 1920, from a decision of A. Tuckey, Esqr., Judicial Commissioner of Chota Nagpur, dated the 14th June, 1920, affirming a decision of H. D. Christian, Esqr., Munsif of Chatra, dated the 20th March, 1920.