

books will depend upon the result of the final hearing of the case.

1926.

Mr. N. C. Sinha on behalf of the appellant says that he will print paper-books of the oral and documentary evidence, for he considers that it will be less costly and inconvenient than to get the paper-books typed. He must do so in consultation with the Deputy Registrar of the Court.

MAHANTH  
RUKMIN DAS  
v.  
DEVA SINGH.

## APPELLATE CIVIL.

*Before Das and Ross, J.J.*

MALIK FAZLUL RAHMAN

v.

MUSSAMMAT KOKILA.\*

1926.

April, 8.

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 16—Bengal Tenancy Act, 1885 (Act VIII of 1885), section 69—Application for execution of order under, by transferee of the land—Person claiming adversely to the decree-holder, whether entitled to execute the decree.*

*F* instituted proceedings under section 69 of the Bengal Tenancy Act, 1885, against the tenants of certain land and obtained an order appointing an officer to appraise or divide the produce of the land. The land in respect of which the decree had been obtained passed into the hands of *K* who had obtained a decree against *F* in the civil court. *K* sought to execute the order obtained by *F* against the tenants on the ground that she was the representative-in-interest of *F*. Order XXI, rule 16, Code of Civil Procedure, provides: "Where a decree.....is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder."

\*Appeal from appellate order nos. 192, 301 to 328 of 1925, from an order of F. F. Madan, Esq., i.c.s., District Judge of Gaya, dated the 19th of May, 1925, confirming an order of Babu Sadhu Charan Mahanti, Munsif of Gaya, dated the 25th February, 1925.

1926.

MALIK  
FAZLUL  
RAHMAN

v.

MUSSAMMAT  
KOKILA.

*Held*, (i) that there was no transfer of the order to *K* by operation of law within the meaning of Order XXI, rule 16; (ii) that *K* was not the representative-in-interest of *F* and that, therefore, she was not entitled to execute the order.

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

*S. Dayal* (for *Kailashpati*), *Janak Kishor* and *Sarju Prasad*, for the appellants.

*Hasan Jan* and *Sultanuddin Hussain*, for the respondents.

DAS, J.—The question involved in these analogous appeals turns on the construction of Order XXI, rule 16, of the Code of Civil Procedure. The facts are these: One Fazlur Rahman instituted certain proceedings under the provisions of section 69 of the Bengal Tenancy Act and obtained decrees as against tenants. It appears that the land in respect of which the decrees had been obtained passed into the possession of Mussammat Kokila, who appears to have got a decree against Fazlur Rahman in the Civil Court. Mussammat Kokila now claims to execute the decrees obtained by Fazlur Rahman and she contends that her right to execute the decrees is conceded to her by Order XXI, rule 16, of the Code.

The learned Advocate appearing on behalf of the respondent concedes that there is no transfer or assignment in writing in this case; but he contends that there is a transfer by operation of law. I am wholly unable to accept this contention. Mussammat Kokila is in no sense the representative-in-interest of Fazlur Rahman. She claimed as against Fazlur Rahman and obtained a decree as against Fazlur Rahman. It is difficult to understand how it can be said that because she has obtained a decree in respect of the disputed land against Fazlur Rahman, therefore it must be held that there is a transfer by operation of law of the decrees under section 69 which had been obtained by Fazlur Rahman as against the tenants.

The decision of the lower appellate court is, in my opinion, erroneous. I would allow these appeals, set aside the orders passed by the courts below and dismiss the application of Mussammatt Kokila. The respondents must pay the costs of these proceedings in all the courts.

Ross, J.—I agree.

*Appeal allowed.*

1926.

MALIK  
FAZLUL  
RAHMAN  
v.  
MUSSAMMAT  
KOKILA.

## APPELLATE CIVIL.

*Before Mullick and Kulwant Sahay, J.J.*

MUSSAMMAT RAMJHARI KOER

v.

LALA KASHI NATH SAHAI.\*

1925-1926.

Oct., 26, 27.  
March, 11.

*Limitation Act, 1908 (Act IX of 1908), Schedule I, Articles 132 and 148—Prior mortgagee, suit by—non-joinder of second mortgagee, effect of—decree and sale, whether affects the second mortgagee's right to redeem—second mortgagee, suit for redemption by—Article 148, applicability of.*

A second mortgagee who has not been made a party to the suit of a prior mortgagee is entitled to redeem the prior mortgagee and is not bound either by the decree in the prior mortgagee's suit or by the sale held in execution thereof.

The second mortgagee not having been made a party to a suit by the prior mortgagee, who obtained a decree and in execution thereof got the mortgaged property sold, subsequently brought a suit to redeem the prior mortgage.

The defendant pleaded that the suit was barred by Article 132 of the Limitation Act, 1908, which provides a period of 12 years for a suit "to enforce payment of money

\*Appeal from Appellate Decree no. 398 of 1923, from a decision of Babu Akhauri Nityanand Singh, Subordinate Judge of Saran, dated the 18th January, 1923, reversing a decision of Rai Krishna Bihari Sharan, Munsif of Chapra, dated the 21st December, 1921.