

refused. For these reasons, as I have already stated, the case of *In re Robinson* (1) cannot be looked upon as an authority for the proposition urged in this case and, in my view, having regard to the state of the law in England, it would be impossible for any party to get a decision from a divisional Court of the King's Bench Division laying down dogmatically and exhaustively the limits or grounds upon which an application for bail should be treated.

1927.

KRISHNA
CHANDRA
JAGATI
v.
KING-
EMPEROR.
WORT, J.

APPELLATE CIVIL.

Before Das and Allanson, JJ.

FIRM NAYAMAT RAM PUJARA LAL

v.

LAL RAMESHWAR NATH SHA DEO.*

1927.

June, 1.

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), section 181A—decree for rent obtained by landlord—transfer of decree but no assignment of interest in land—assignee, application for execution by, whether maintainable.

I obtained a decree for rent against R and others under the Chota Nagpur Tenancy Act. The decree was subsequently transferred to N, but there was no assignment of the landlord's interest in the land to the assignee of the decree. The latter, however, applied for the execution of the decree as a money decree. The judgment-debtors contended that the application was barred by section 181A, Chota Nagpur Tenancy Act, 1908, which provides as follows :

"An application for the execution of a decree for arrears of rent obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in the assignee."

*Appeal from Appellate Order no. 239 of 1926, from an order of G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 9th July, 1926, reversing an order of Babu Pramatha Nath Bhattacharji, Subordinate Judge of Ranchi, dated the 24th April, 1926.

(1) (1854) 23 L. J. Q. B. 286.

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The subordinate judge, relying on *Forbes v. Maharaj Bahadur Singh*(1) overruled the objection of the judgment-debtors and allowed the application to proceed.

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On appeal, the Judicial Commissioner reversed the decision of the Subordinate Judge and, on the authority of *Sudhanya Kumar Poddar v. Gouranga Chandra Saha Chowdhary*(2), held that the assignee could not execute the decree even as a money decree.

Held, in second appeal, that the application for execution was barred by section 181A of the Chota Nagpur Tenancy Act.

The facts of the case material to this report were as stated above.

Sambhu Saran, for the appellant: There is no bar to a decree for arrears of rent being executed as an ordinary decree for debt at the instance of the assignee of the decree. *Forbes v. Maharaj Bahadur Singh* (1) has been wrongly distinguished by the Judicial Commissioner. There is no distinction between an ex-landlord and an assignee of a decree for rent, so far as the execution of that decree is concerned. I rely on *Manurattan Nath v. Hari Nath Das*(3) and *Rajani Kanta Ghose v. Rama Nath Roy* (4).

[DAS, J.—The decree has been obtained under the Chota Nagpur Tenancy Act and not under the Civil Procedure Code. The distinguishing feature in this case is that you must be bound by the provisions of the Act.]

Sudhanya Kumar Poddar v. Gouranga Chandra Saha Chowdhury(2) has been wrongly decided. In *Gurucharan Nath Bepari v. Kartik Nath*(5) on which *Sudhanya Kumar Poddar v. Gouranga Chandra Chowdhury*(2) is based, the question was whether the assignee could proceed to execute the decree under the

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

(2) (1917) 41 Ind. Cas. 542.

(3) (1905) 1 Cal. L. J. 500.

(4) (1914) 20 Cal. L. J. 200.

(5) (1905-06) 10 Cal. W. N. 44.

provisions of the Bengal Tenancy Act. The matter was referred to a Full Bench but the point was left undecided as the reference was held to be not in order. See *Gopal Chandra Kundu v. Drastulla Sheikh*(1). A landlord who has obtained a decree for arrears of rent is at liberty to execute it in the first instance as a money decree without first enforcing the charge against the tenure or holding [*See Fotick Chundra Dey v. E. G. Foley* (2), followed in *Sailaja Prasad Chatterjee v. Gyani Das*(3)].

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In *Chandra Nath Tewari v. Pratap Udai Nath Sahi*(4) it was held that a decree for rent can be executed as such or as a simple decree for money. The words "notwithstanding anything contained in section 233, Code of Civil Procedure.....", in section 148(h) of the Bengal Tenancy Act, do not occur in the Chota Nagpur Tenancy Act.

Abani Bhusan Mukerjee, Government Pleader, for the respondent: The transferee cannot execute the decree because the policy of the legislature is not to allow strangers to come on the land. By an assignment the character of the decree cannot be changed. In *Forbes v. Maharaj Bahadur Singh*(5), when the landlord brought the suit, he had ceased to be the landlord. It was, therefore, pointed out by their Lordships that the decree obtained in that suit was not a decree for rent, but was from the very inception an ordinary decree for money. *Sudhanya Kumar Poddar v. Gouranga Chandra Saha Chowdhury*(6) reconciles the supposed conflict in the authorities. Section 182, Chota Nagpur Tenancy Act, debars a decree for arrears of rent from being executed by any court other than that specially empowered in that behalf. The civil court therefore cannot execute it as a decree for

(1) (1918) 28 Cal. L. J. p. 33n.

(2) (1888) I. L. R. 15 Cal. 492.

(3) (1913) 18 Cal. L. J. 29.

(4) (1913-14) 18 Cal. W. N. 170.

(5) (1914) I. L. R. 41 Cal. 926, P. C.

(6) (1917) 41 Ind. Cas. 542.

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money under the provisions of the Code of Civil Procedure which do not apply to the Chota Nagpur Tenancy Act [vide *Lal Nilmoni Nath Sahi Deo v. Rai Bahadur Baldeo Das Bista* (1)]. The case of *Chandra Nath Tewari v. Pratap Udai Nath Sahi* (2) does not apply to the facts of the present case. There it was held that the decree did not fulfil the requirements of the Bengal Tenancy Act, and, therefore, it was an ordinary decree for money.

A decree for rent is a decree on the contract *plus* the condition that there must be the relationship of landlord and tenant.

Sambhu Saran, replied.

S. A. K.

Cur. adv. vult.

DAS, J.—In my opinion the decision of the learned Judicial Commissioner is right and must be affirmed. Section 181A of the Chota Nagpur Tenancy Act is really conclusive of the matter. That section provides as follows :

“ An application for the execution of a decree for arrears of rent obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in the assignee.”

It is contended before us that as the landlord is entitled to execute his decree for rent as a money decree, so the assignee is free from the complications raised by section 181A of the Chota Nagpur Tenancy Act. But in this case the landlord has obtained a decree for arrears of rent; he has assigned that decree to the appellant and it is conceded that the landlord's interest in the land has not vested in the assignee. That being the position section 181A of the Chota Nagpur Tenancy Act applies to the facts of the case.

I would therefore dismiss this appeal with costs.

ALLANSON, J.—I agree.

Appeal dismissed.

(1) (1919) C. W. N. (Pat.) 145,

(2) (1913-14) 18 Cal. W. N. 170.