

be decided on the simple question, in whom the ownership of the property was when it was sold? The result can only be that which my learned brother has stated in his judgment.

Appeal dismissed.

1936.
 BHAGWATI
 SARAN
 v.
 RAJ
 KISHENJI.

ROWLAND, J.

APPELLATE CIVIL.

Before Macpherson and Fazl Ali, JJ.

MAHARAJA PRATAP UDAI NATH SAHI DEO

v.

BARAIK LAL SAHI.*

1936.
 January,
 14, 20.

Chota Nagpur Tenancy Act, 1908 (Act VI of 1908), sections 181 and 208—decree for rent passed by Deputy Collector and not executable as rent decree, if can be executed in Civil Court—Deputy Commissioner's jurisdiction to transfer decree, if confined to Courts under the Act.

M's application for execution of a decree for rent passed by the Deputy Collector of Ranchi under section 208 of the Chota Nagpur Tenancy Act having been rejected on the ground of defect of parties, he applied for transfer of the decree to the Munsif which application was rejected by the Deputy Commissioner. Thereafter M applied for execution before the Munsif.

Held, (i) that under section 38 of the Code of Civil Procedure, a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution and that in the circumstances the Munsiff had no jurisdiction to execute the decree;

(ii) Section 182 of the Chota Nagpur Tenancy Act lays down that a decree or order passed by a Deputy Commissioner may be executed either by his own Court or by any other prescribed Court and the Court prescribed being his own

* Appeals from Appellate Orders nos. 302 and 316 of 1934, from an order of H. Whittaker, Esq., I.C.S., Officiating Judicial Commissioner of Chota Nagpur, dated the 29th September, 1934, affirming an order of Maulavi S. A. Hamid, Munsif of Ranchi, dated the 6th August, 1934.

1936.

MAHARAJA
PRATAP
UDAI NATH
SAHI DEO
v.
BARAIK
LAL SAHL.

Court or any Court to which he transfers the application for execution, the Deputy Commissioner had jurisdiction to transfer the decree only to Courts under the Act;

(iii) that there is no basis for an interpretation that a decree is not passed under the Act unless it is capable of execution by the special method set out in that section.

The Act is a complete code in itself and it contemplates all decrees passed by the Deputy Commissioner in suits for arrears of rent as decrees under the Act, irrespective of the manner in which such decrees may be executed.

If the decree cannot be executed under section 208, the decree-holder may with the permission of the Deputy Commissioner proceed against any other property moveable or immoveable of the judgment-debtor.

Quære :—Even if the decree in the Revenue Court could have been executed in a civil court by transfer, would the operation of the more liberal provisions as to limitation obtaining therein be attracted?

Appeal by the decree-holder.

The facts of the case material to this report are set out in the judgment of Macpherson, J.

B. C. De, for the appellant.

No one for the respondents.

MACPHERSON, J.—In appeal no. 302 the Maharaja of Chota Nagpur assails the decision of the Judicial Commissioner affirming the finding of the Munsif of Ranchi that the application made by the appellant in 1934 for execution of his decree in a suit for rent obtained on the 26th November, 1925, in the Court of the Deputy Collector of Ranchi, was barred by limitation under the provisions of section 181 of the Chota Nagpur Tenancy Act.

The decree was passed against defendants in a suit for the rent of the tenure consisting of village Fulsuri and half of Hurhuri. When execution under section 208 of the Chota Nagpur Tenancy Act (here-

inafter designated the Act) was taken in the Court in which the decree was passed, the application was rejected on the ground that as all persons interested in the tenure had not been parties to the suit, the provision was not applicable. Thereupon, instead of applying under section 210(2) of the Act, the decree-holder applied to the Deputy Commissioner of Ranchi for the transfer of the decree for execution to the Munsif of Ranchi. This application was apparently made in view of an obiter dictum in *Chandra Nath Tiwari v. Pratap Udai Nath Sahi*(1) to the effect that it was open to a decree-holder whose decree could not be executed as a rent decree to have it executed by the ordinary Civil Court as a decree for money against the judgment-debtor, and that could be done if a proper application is presented to the Civil Court competent to execute such a decree. Section 182 of the Chota Nagpur Tenancy Act lays down—

“A decree or order passed by a Deputy Commissioner under this Act may be executed either by his own Court or by any other prescribed Court.”

Notification no. 2704-T.R., dated the 21st October, 1909, prescribes that a decree or order passed by the Deputy Commissioner may be executed either by his own Court or by any Court to which the Deputy Commissioner of the district transfers the application for execution. The Deputy Commissioner of Ranchi, doubted, not without reason, whether the Court (other than his own Court) referred to in the notification included the Court of a Munsif, meaning thereby a Civil Court as distinguished from the revenue Court contemplated by the Act and rejected the decree-holder's application for transfer to the Munsif. The decree-holder then presented his application for execution direct to the Court of the Munsif and on his fourth application presented in 1934 the order now impugned was passed rejecting his claim that in the Civil Court he was entitled to a limitation

1936.

MAHARAJA
PRATAP
UDAI NATH
SAHI DEO
v.
BARAIK
LAL SAHU.

MACHER-
SON, J.

(1) (1913) 18 Cal. W. N. 170.

1936.

MAHARAJA
PRATAP
UDAI NATH
SAHJ DEO
v.
BARAIK
LAL SAHJ.

MACPHER-
SON, J.

of twelve years. The question of jurisdiction was not considered.

The appeal must fail on various grounds. The most obvious of them is that the Munsif had no jurisdiction. The Deputy Commissioner of Ranchi had not transferred the decree to the Court of the Munsif. The Munsif of Ranchi is indeed ex-officio a Deputy Collector but it was never contended that the decree had been transferred to him as Deputy Collector and the proceedings in execution were in fact conducted throughout on the Civil side and not on the Revenue side. Now under section 38 of the Code of Civil Procedure "a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution". Manifestly the Munsif of Ranchi had even as a Civil Court no jurisdiction to execute a decree which he had not passed and which had not been transferred to him. Apart from that the Deputy Commissioner appears, as already indicated, to have jurisdiction under the notification to transfer only to Courts under the Act.

Again on the question of limitation section 181 lays down—

"No application for the execution of a decree or order passed by the Deputy Commissioner under this Act shall be entertained unless such application be made within three years from (a) the date on which the decree or order is signed....."

It was contended that a decree is not passed under the Act unless it is what is sometimes called 'a rent decree', that is, such a decree as is capable of execution under section 208. But there is no basis for an interpretation that a decree is not passed under the Act unless it is capable of execution by the special method set out in that section. The Act, like Bengal Act I of 1879, is a complete code in itself and it contemplates that all decrees passed by the Deputy Commissioner in suits for arrears of rent are decrees passed under the Act irrespective of the manner in which such decrees may be executed. If the decree

cannot be executed under section 208, the decree-holder may with the permission of the Deputy Commissioner proceed against any other property moveable or immovable of the judgment debtor, a special procedure adapted from the Code of Civil Procedure being prescribed by section 210(3) for execution in which the decree-holder is not entitled to the highly favourable procedure of section 208.

Finally as the decree was passed under the Act (though it is one not entitled to the most favoured procedure in execution), the application in 1934 was clearly barred under section 181. Even if the decree could have been executed in a Civil Court by transfer, it seems doubtful whether the operation of the more liberal provisions as to limitation obtaining therein would have been attracted.

The appeal fails and is dismissed.

Appeal from Appellate Order no. 316 of 1934.

Mr. B. C. De for the same appellant stated that the respondent no. 1 is dead and he would ordinarily proceed against the others but that if the decision in M. A. 302 of 1934 is against him, he will not press the appeal. Appeal no. 302 has been dismissed. This appeal is accordingly dismissed *ex parte* without costs.

FAZL ALI, J.—I agree.

Appeals dismissed.

LETTERS PATENT.

Before Courtney Terrell, C.J. and Dhaule, J.

KHUBLAL SINGH

v.

ISHRI PRASAD.*

Landlord and Tenant—suspension of rent—dispossession by landlord from one out of ten plots—tenant, whether

1936.

MAHARAJA
PRATAP
UDAI NATH
SAHI DEO
v.
BARAIN
LAL SAHI.

MAGPHER-
SON, J.

1935.

November,
28.

* Letters Patent Appeal no. 2 of 1935, from a decision of the Hon'ble Mr. Justice James, dated the 5th December, 1934.