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Pearay Pasi v. Gauri Lal⁽¹⁾. Although this last mentioned case has been overruled on another point by the Special Bench in *Ghanshyam Das Marwari v. Ragho Sahu*⁽²⁾ it is still good authority for the view that the decision in *Sarjug Singh v. Deo Saran Singh*⁽³⁾ is not good law.

In the result I would allow the appeal of the plaintiff and restore the decision of the Munsif. The plaintiff will have his costs throughout.

The defendant in the present suit also pleaded that he had made certain payments to Shamnandan Prasad Singh in respect of the amount for which he is now sued. In a suit by the payee of a handnote against the drawer the defence that payments have been made to someone who is not the payee cannot be taken into consideration: see section 78 of the Negotiable Instruments Act. We are, therefore, not concerned with the truth of the defendant's allegations regarding these payments.

ROWLAND, J.—I agree.

Appeal allowed.

S. A. K.

APPELLATE CIVIL.

Before Agarwala and Rowland, JJ.

BAIJNATH RAM MARWARI

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v.

RAI KUMAR SINHA.*

Bihar Tenancy Act, 1885 (Act VIII of 1885), section 177A—words "and occupied by him", meaning of.

Section 177A of the Bihar Tenancy Act, 1885, provides :

"Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, a decree for arrears of rent obtained against a raiyat or an under-raiyat shall not be executed—

(a) by the detention in the civil prison of the judgment-debtor, or

* Appeal from Appellate Order no. 180 of 1939, from an order of H. R. Meredith, Esq., I.C.S., District Judge of Bhagalpur, dated the 17th July, 1939, affirming an order of Maulavi Muhammad Hasan, Munsif at Bhagalpur, dated the 13th June, 1939.

(1) (1934) I. L. R. 13 Pat. 655.

(2) (1936) I. L. R. 16 Pat. 74, S. B.

(3) (1930) 11 Pat. L. T. 255.

(b) by the sale of houses and other buildings with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment, belonging to the raiyat or under-raiyat and occupied by him;

Provided that any such house or building and the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment may be sold in execution of a decree for arrears of rent due in respect of the site of such house or building."

Held, that the words "and occupied by him", occurring in section 177A, mean "occupied by the raiyat or under-raiyat as such raiyat or under-raiyat" and do not exempt from attachment houses or buildings not occupied by a raiyat or under-raiyat as a dwelling house or for some purpose connected with his vocation as a raiyat or an under-raiyat.

Radhakisan Hakimji v. Balvant Ramji(1) and *The Bank of Chettinad v. Ko San Ok*(2), followed.

Appeal by the judgment-debtor.

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

S. N. Dutta, for the appellant.

C. P. Sinha, for the respondent.

AGARWALA, J.—This appeal is by the judgment-debtor from an order of the District Judge of Bhagalpur confirming an order of the Munsif. The appellant carries on business as a money-lender and dealer in grain at Colgong where he has a residential house and two godowns for the storage of grain. Six miles from Colgong he has a holding of 305 bighas in respect of which he is a raiyat. The landlord of this holding obtained a decree for arrears of rent of the holding and in execution of that decree attached the three buildings at Colgong. The judgment-debtor claimed exemption of these buildings from sale in execution by reason of section 177A of the Bihar Tenancy Act which was introduced into the Act in 1937. The Court below has exempted from attachment the house actually occupied by the judgment-debtor as a residence and has attached only the two godowns. Section 177A provides that a decree for arrears of rent obtained against a raiyat or an under-raiyat shall not be executed by the sale of houses and other buildings with the materials and

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(1) (1883) I. L. R. 7 Bcm. 530.

(2) (1933) I. L. R. 11 Rang. 372, F. B.

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sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment, belonging to the raiyat or under-raiyat and occupied by him. There is a proviso which permits the sale of such houses and buildings in execution of a decree for arrears of rent due in respect of the site of such houses or buildings. The question that arises is what is meant by the words "and occupied by him" in this section. The new section is analogous to section 60(1)(c) of the Code of Civil Procedure which exempts from attachment and liability to sale in execution of a decree houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him. In *Radhakisan Hakumji v. Balvant Ramji*(¹) the corresponding provision of the Code of Civil Procedure of 1882 was under consideration and it was held that the exemption under the Civil Procedure Code "is of a house or building occupied by an agriculturist and this, we think, means the house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling. It does not include other houses which in one sense may be occupied; what is meant is a physical occupation, by an owner, of his house as a dwelling appropriate or convenient for his calling". This decision was cited with approval by the Full Bench of the Rangoon High Court in *The Bank of Chettinad v. Ko San Ok*(²) where it was observed that the correctness of the Bombay decision had never been doubted in the High Courts in India. In my view the words "and occupied by him" in section 177A of the Tenancy Act mean occupied by the raiyat or under-raiyat as such raiyat or under-raiyat and do not exempt from attachment houses or buildings not occupied by a raiyat or under-raiyat as a dwelling house or for some purpose connected with his vocation as a raiyat or an under-raiyat. Consequently I would dismiss this appeal with costs

ROWLAND, J.—I agree.

S.A.K.

Appeal dismissed.

(1) (1883) I. L. R. 7 Bom. 530.

(2) (1888) I. L. R. 11 Rang. 372 F R