1901
JAN. 2.

APPELLATE CIVIL.

28 C. 483.

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[483] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Pratt.

UDOY KUMARI GHATWALIN (*Judgment-debtor*) *v.* HARI RAM SHAHA AND OTHERS (*Decree-holders.*)* [2nd January, 1901.]

Attachment—Decree, attachment in execution of—Ghatwali estate—Attachment of future rents and profits—Prohibitory order—Receiver.

Future rents and profits that may become due to a Ghatwal cannot, as such, be attached in execution of a decree against him.

***Haridas Acharjia Chowdhary* v. *Baroda Kishore Acharjia Chowdhry* (1) followed.**

IN this case the decree-holders had obtained a decree for money against the judgment-debtor, a Ghatwal, and in execution of the decree they applied for the attachment of the rents and profits that may become due to the Ghatwal, after deducting the wages payable to chowkidars and other incidental expenses, and for the appointment of a Receiver. Thereupon the Subordinate Judge issued a prohibitory order to the Ghatwal not to receive any rents and profits from the raiyats and a similar order to the raiyats not to pay rents to the Ghatwal; but he did not pass any order as to the appointment of a Receiver. The judgment-debtor objected to the order on the ground, amongst others, that such rents and profits were not attachable. The objection was overruled, and the attachment allowed.

Thereupon the judgment-debtor appealed to the Deputy Commissioner of the Santhal Pergunnahs, who dismissed the appeal. The judgment-debtor then appealed to the High Court.

1901, JANUARY 2. Babu *Lalmohan Dass* and Babu *Jogesh Chundra Dey*, for the appellant.

Babu *Karuna Sindhu Mukerjee*, for the respondents.

[484] 1901, JANUARY 20. The judgment of the High Court (GHOSE and PRATT, JJ.) was as follows:—

This is an appeal against an order of the Deputy Commissioner of the Santhal Pergunnahs, affirming an order of the Subordinate Judge of Deoghur, allowing an attachment of the rents and profits due to a certain Ghatwal, the judgment-debtor, on account of his Ghatwali estate.

The decree-holders, who are the respondents before us, obtained a decree for money against the Ghatwal, and in execution of that decree they prayed that the rents and profits that may be due to the Ghatwal *minus* the wages payable to chowkidars and other outgoings should be attached and placed in the hands of a Receiver. It does not, however, appear that the Subordinate Judge made any order for the appointment of a Receiver; and it seems to us that, if a Receiver had been appointed, the objection (which we shall presently mention) that has now been raised before us could not have been raised. But the order that that officer made was simply to this effect: Let a prohibitory order issue to the

* Appeal from Order No. 417 of 1899, against the order of C. Fisher, Esq., Officiating Deputy Commissioner of Santhal Pergunas, dated the 12th of September 1899, affirming the order of F. E. Piffard, Esq., Subordinate Judge of Deoghur, dated the 20th of July 1899.

(1) (1899) I. L. R. 27 Cal. 38.

Ghatwal not to receive any rents and profits from the raiyats, and also to the raiyats not to pay their rents to the Ghatwal.

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This order, which was affirmed on appeal, has now been appealed against by the judgment-debtor; and it is contended on his behalf that what has been done by the Subordinate Judge and affirmed by the Deputy Commissioner is to attach future rents and profits; and that this could not be done under the law. As we have already said, if the Subordinate Judge had made the order in terms of the application of the decree-holders and appointed a Receiver to take charge of the rents and profits as they fall due from time to time, no difficulty would arise; but difficulty may arise from the terms of the order of the Subordinate Judge, to which we have just referred. It is quite possible that the Subordinate Judge by his order meant to direct that, as the rents and profits fall due, they would stand attached; but, as it is, we are not quite sure, that this is what the Subordinate Judge meant by his order. In this connection we may refer the Subordinate Judge, not only to the case, which Mr. Fisher, the late Deputy Commissioner, has cited in his judgment (1), but [485] also to the case of *Haridas Acharjia Chowdhry* v. *Baroda Kishore Acharjia Chowdhry* (2), as showing that future rents and profits, as such, cannot be attached, and we might here add the practical effect of the order of the Subordinate Judge is that, the Ghatwal, being prevented from recovering the rents and profits in future, would not be in a position to pay the wages of the chowkidars, and so to perform the duty which devolves upon him as Ghatwal. We think, however, that, if a proper application is made to the Subordinate Judge by the decree-holders for the appointment of a Receiver, that officer will consider the propriety of making such appointment; and in that case, there will be no difficulty in the Receiver receiving the rents and profits as they fall due from time to time, and making provisions for the payment of the wages of the chowkidars and other incidental expenses.

With these observations we send back the case to the Subordinate Judge. We make no order as to costs.

Case remanded.

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28. C. 485.

Before Mr. Justice Ghose and Mr. Justice Pratt.

E. J. ROOKE (*Plaintiff*) *v.* BENGAL COAL COMPANY, LD. (*Defendants*).* [4th January, 1901.]

Land—Act X of 1859, *s.* 23, *cl.* 4—*Suit for rent—Mining lease—Revenue Courts, Jurisdiction of—Suits, cognisance of.*

The word 'land' in s. 23, clause 4, of Act X of 1859, refers to land granted for agricultural or horticultural purposes and not to land granted for mining purposes and for purposes of building, making roads and so forth.

The words '*or the like*' in the same clause must be taken *ejusdem generis* with the rights spoken of therein, and do not cover the right of taking coal from the land demised.

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* Appeal from Appellate Decree No. 1147 of 1898, against the decree of F. B. Taylor, Esq., Judicial Commissioner of Chota Nagpur, dated the 7th of April 1898, affirming the decree of Babu Prasanna Kumar Das Gupta, Deputy Collector of Gobindpore, dated the 28th of September 1897.

(1) (1896) I. L. R. 23 Cal. 873.—[*Rep.*] (2) (1899) I. L. R. 27 Cal. 38.