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of the lower Appellate Court. If then we eliminate the *putni* element, what remains?—Only the position I have adverted to before, from which it is apparent that the plaintiff [571] cannot sustain the present action. For these reasons I think that this appeal must be allowed and the plaintiff's suit dismissed with costs in all Courts.

HOLMWOOD J. I agree.

Appeal allowed.

32 C. 572 (=1 C. L. J. 255.)

[572] CIVIL RULE.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Holmwood.

GANGA CHARAN BHUTTACHARJEE *v.* SHOSHI BHUSHAN ROY.*
[14th February, 1905.]

Appeal—Bengal Tenancy Act (VIII of 1885), s. 153—Order setting aside sale—High Court—Revision, power of—Civil Procedure Code (XIV of 1882), s. 622.

An order setting aside a sale in execution of a decree decides a question relating to the title to the land or to some interest in the land as between parties having conflicting claims thereto, and is therefore appealable under s. 153 of the Bengal Tenancy Act (VIII of 1885), although it was made by an Officer specially authorized under the section, in a suit for rent valued at less than fifty rupees.

In deciding whether an order is appealable under that section, the point for consideration is not what the decree in the suit decided, but what the order decided.

Monmohini Dassi v. Lakhinarain Chandra (1) distinguished.

Where a Court rejects an application under ss. 244 and 311 of the Civil Procedure Code on the ground that the applicant had no *locus standi*, the case would not fall within s. 622 of the Code.

[**Pol.** 32 Cal. 957 (F. B.)=9 C. W. N. 721=1 C. L. J. 476.]

RULE granted to Ganga Charan Bhuttacharjee under s. 622 of the Civil Procedure Code.

A *ryoti* holding, the subject-matter of these proceedings, was originally held by one Uma Charan Shaha under Shoshi Bhushan Roy, the decree-holder, opposite party. It was sold in execution of a money decree and was purchased by Ganga Charan Bhuttacharjee the petitioner, on the 24th May 1900, who it appears obtained possession in the course of the year. The landlord Shoshi Bhushan Roy obtained a decree for rent in respect of the holding against Sarada Sundari, the judgment-debtor, opposite party, on the 12th May 1902, and in execution of the decree the holding was put up [573] for sale and was purchased by the decree-holder, Shoshi Bhushan, on the 18th May 1903. The sale to Shoshi Bhushan was confirmed on the 9th July 1903.

The petitioner, Ganga Charan Bhuttacharjee, instituted the present proceedings on the 22nd July 1903 for setting aside the sale of the 18th May on the ground of fraud and irregularity resulting in substantial injury.

The decree-holder contended that as the holding was not transferable by law or custom, the petitioner had acquired no interest therein by his purchase, and that consequently he had no right or *locus standi* to maintain

*Civil Rule No. 3489 of 1904.

(1) (1900) I. L. R. 28 Cal. 116.

these proceedings. On the merits he urged that there was no fraud or irregularity, and that the property had been sold at a fair price.

The Munsif, Babu Sasi Kumar Ghose, who was an officer specially authorized under s. 153 (b) of the Bengal Tenancy Act, overruled all the objections urged by the decree-holder, and by his order, dated the 7th December 1903, held that the execution proceedings were fraudulent and set aside the sale.

On appeal by the decree-holder the District Judge held that the petitioner had no *locus standi* under s. 244 of the Civil Procedure Code, and ordered the sale to be confirmed.

The petitioner then moved the High Court under s. 622 of the Civil Procedure Code and obtained this Rule.

The amount claimed in the suit for rent was less than Rs. 50.

Babu *Jadu Nath Kanjilal*, for the petitioner.

Babu *Romesh Chandra Bose*, for the opposite party.

MACLEAN, C. J. This Rule has been granted on two grounds: first, that no appeal lay from the order of the Munsif to the Additional District Judge, and, secondly, that the petitioner had no *locus standi* to support his application.

The facts, so far as are necessary for the purposes of our present decision, may be thus briefly stated. There was a rent suit, in which a decree was made on the 12th May 1902. On the 18th May 1903, the holding was sold for Rs. 25, and the decree holder was the purchaser. The decree-holder is the opposite party on the present occasion. The petitioner purchased the property on the 24th May 1900 under a money decree. On the 7th of December [574] 1903, an order was made by the Munsif upon an application by the petitioner under the conjoint effect of sections 311 and 244 of the Code of Civil Procedure, setting aside the sale of the 18th May 1903. The purchaser under that sale appealed to the Additional District Judge, who, without going into the merits, held that the petitioner was not a representative of either of the parties in the suit within the meaning of section 244, and reversed the order of the Munsif. This Rule was then applied for, and granted upon the grounds I have stated.

The first point is that the Additional District Judge had no jurisdiction to entertain the appeal, having regard to the provisions of section 163 of the Bengal Tenancy Act, and for that proposition reliance is placed upon a decision of a Divisional Bench of this Court in the case of *Monmohini Dasi v. Lakhinaraian Chandra* (1). It is urged for the petitioner that, inasmuch as this was an order made in a suit instituted by a landlord for the recovery of rent, in which the amount claimed did not exceed Rs. 50, no appeal lay from the order of the Munsif. As regards the amount no question has been raised. In the case I have referred to, it was held that "no appeal lies from an order passed by a District Judge setting aside a sale in execution of an *ex parte* decree for rent valued at less than one hundred rupees." The Court in the case mentioned laid great stress on the fact that the decree was made *ex parte* here there is nothing to show that it was. The learned Judges say "we think that this contention must prevail. It is clear that the decree, in execution of which the order appealed against was passed, was a decree for less than Rs. 100; and, as it was an *ex parte* decree, none of the questions referred to in the proviso to section 153 of the Bengal Tenancy Act can possibly have been decided." But what we

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have to consider is not what the decree decided, but what the order, against which it is sought to appeal, decided. Section 153 speaks of "decree or order." Speaking for myself, I do not think it makes the slightest difference whether the decrees were or were not *ex-parte*, if that which is sought to be appealed against is not the decree, but an order. We are freed from sending this to a Full Bench, as the circumstances are not the same, there being [575] nothing in the present case to show that the decree in the rent suit was made *ex-parte*. Let us look at the section. "An appeal shall not lie from any . . . , order passed whether in the first instance or on appeal in any suit instituted by a landlord for the recovery of rent where, . . . (I need not read paragraphs 'a' and 'b' as nothing turns upon them), unless in either case the . . . order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto."

The effect of the order of the Munsif was practically to hold that the purchaser, under the purchase of the 18th of May 1903, had no title to the land; and the order certainly decided a question relating to the title to the land or to some interest in the land as between parties having conflicting claims thereto. Here the parties had conflicting claims to the land. The opposite party says: "This is my land, because the sale to me is a good sale." The petitioner says: "It is my land because the sale to you is a bad one;" and that was the question which was decided by the order which was under appeal to the Additional District Judge. One has only to read the judgment of the Munsif to see that he did decide a question relating to the title to the land. In my opinion an appeal did lie to the Additional District Judge, and consequently he was not acting without jurisdiction, when he made his order.

I now pass to the second point, namely, that the Additional District Judge was wrong in holding that the petitioner had, as he calls it, no *locus standi*, by which, I suppose, he means that he was, not a representative of any of the parties within the meaning of section 244. If he was wrong in that he was wrong upon a question of law, and not of jurisdiction, and the case would not fall within section 622, Civil Procedure Code.

The same observation applies as to whether or not the petitioner was a person whose immovable property has been sold within the meaning of section 311, Civil Procedure Code.

The Rule therefore is discharged with costs.

HOLMWOOD, J. I agree.

Rule discharged.

32 C. 576 (=2 C. L. J. 73.)

[576] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Brett.

SHEO SARAN SINGH v. MOHABIR PERSHAD SAHA.*

[17th January, 1905.]

Mortgage—Equitable set off—Redemption—Usufructuary mortgage—Accounts, mode of taking—Surplus receipts—Civil Procedure Code (Act XIV of 1882), s. 111.

*Appeal from Appellate Decree, No. 2586, of 1903, against the decree of G. Gordon, District Judge of Sarun, dated September 3, 1902, reversing the decree of Moti Lal Haidar, Subordinate Judge of Chapra, dated June 19, 1900.