

Judge. *Sanwal Das v. Bismillah Begam* (1), *Liladhar v. Chaturbhuj* (2) and *Hiralal Sahu v. Parmeshar Rai* (3) go to show that the contention of the judgment-debtor is not maintainable.

Clause (c) of section 244 does not seem to us to be intended to apply to a case where the judgment-debtor tries to set aside the effect of a decree. It refers to proceedings in execution based on the decree as if the decree was perfectly good and valid.

We therefore set aside the order of the District Judge and restore that of the Subordinate Judge, the decree-holders being competent to proceed to the sale of the mortgaged property as directed by the decree obtained by them. The costs of this appeal must be borne by the respondent.

Appeal allowed.

1904
NOV. 25.

APPELLATE
CIVIL.

32 C. 265.

32 C. 268.

[268] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Brett.

FURZAND ALI v. MOHANTH LAL PURI.*

[11th January, 1905.]

Court-fee—Court-Fees Act (VII of 1870), s. 7, cl. XI (e)—Occupancy holding, suit for possession of—

Section 7, cl. 11 (e) of the Court-Fees Act (VII of 1870) does not apply to a suit for possession of an occupancy holding brought by the tenant against the landlord and as well as the person whom the landlord has inducted into the land; the court-fee payable on the plaint in such a case must be computed on the market-value of the property which the plaintiff seeks to recover.

[*Fol* : 31 *Mad.* 14=3 *M. L. T.* 9=17 *M. L. J.* 478 ; *Ref.* 19 *C. L. J.* 418=25 *I. C.* 507 ; 23 *I. C.* 904 ; 16 *C. L. J.* 375=16 *I. C.* 968.]

SECOND APPEAL by the plaintiff, Shekh Furzand Ali.

The allegations in the plaint material to this report are that the lands in suit formed the *maurusi-jote* of the plaintiff under the landlords, defendants Nos. 1 and 2; that the latter had collusively executed a *thika patta* in respect of the said lands in favour of defendant No. 3 and that the three defendants had dispossessed him from the said lands; he therefore instituted this suit against all the three defendants to recover possession of the lands on declaration of his *maurusi-jote* right.

The plaintiff valued his suit at one year's rental according to s. 7, cl. 11 (e) of the Court-Fees Act, and brought the suit in the Munsif's Court. The Munsif held that that section did not apply and finding that the market-value of the land exceeded his jurisdiction, returned the plaint which was then presented before the Subordinate Judge. He also held that s. 7, cl. 11 (e) of the Court-Fees Act did not apply and called on the plaintiff to pay Court-fee on the market-value of the land. As the plaintiff did not do so the plaint was rejected.

[269] This order was affirmed by the District Judge on the ground that although s. 7, cl. 11 (e) of the Court-Fees Act did apply to the case, the plaintiff having accepted the Munsif's valuation for the purpose of

* Appeal from Appellate Decree, No. 2077 of 1902, against the decree of W. B. Brown, District Judge of Patna, dated June 5, 1902, affirming the decree of Jogendra-nath Dev, Officiating Subordinate Judge of Patna, dated Feb. 21, 1902.

(1) (1897) I. L. R. 19 All. 480.

(3) (1899) I. L. R. 21 All. 356.

(2) (1899) I. L. R. 21 All. 277.

1905
JAN. 11.
—
APPELLATE
CIVIL.
—
32 C. 268.

jurisdiction, was bound to pay court-fees according to that valuation, under s. 8 of Act VII of 1887.

Moulvi *Mahomed Ishfaq*, for the appellant.

Dr. *Rash Behary Ghose*, Babu *Kali Kishen Sen*, Babu *Raghunath Singh*, Babu *Karunamoy Bose*, for the respondents, were not called upon.

RAMPINI AND BRETT, JJ. The suit out of which this appeal arises is one for recovery of possession of an occupancy holding, from which the plaintiff, who alleges himself to be the tenant, has been dispossessed by the landlord. He sues not only the landlord but the three persons whom the landlord has inducted into the land.

In these circumstances we do not think that the suit is one under the provisions of section 7, XI (e) of the Court-Fees Act, and that the Court-fee must accordingly be computed on the market-value of the property which the plaintiff seeks to recover.

That being so, the judgment of the Subordinate Judge was right in this case and that of the District Judge substantially right, although we cannot agree with the reasons given by the learned District Judge. The appeal is dismissed with costs.

Appeal dismissed.

32 C. 270 (=3 C.W.N. 247.)

[270] ORIGINAL CIVIL.

Before Mr. Justice Bodilly.

PRAMATHA NATH GANGOOLY *v.* KHETRA NATH BANERJEE.*

[12th December, 1904.]

Receiver—Suit against Receiver without leave of Court—Application for such leave after filing of suit—Practice.

The consent of the Court to an action against a Receiver appointed by the Court, is a condition precedent to the right of the party to sue, and cannot be rectified by a subsequent application for permission to continue the action brought without such permission.

[Diss. 14 C. L. J. 50=15 C. W. N. 872=10 I. C. 527 ; 43 Mad. 793=59 I. C. 568 ; Ref. 18 C. W. N. 546=22 I. C. 623=19 C. L. J. 191 ; 23 C. W. N. 496=51 I. C. 486=46 Cal. 352 ; 15 C. W. N. 54=8 I. C. 1 ; 61 I. C. 888 ; 63 I. C. 843.]

THIS was an application made by one Kunja Lal Seal (the plaintiff) in a suit brought in the Court of the 3rd Subordinate Judge of Hooghly against Mr. J. Chatterjee the Receiver, appointed by the High Court, of the estate of one Nobin Chunder Gangooly) for an order that leave might be given to him by the High Court to continue that suit against the Receiver or in the alternative, for leave to institute a fresh suit against the said Receiver.

In his petition, the plaintiff stated that he had omitted to take the leave of the High Court to sue the Receiver before the institution of the suit ; and that in the event of his not obtaining leave to prosecute the suit, he would be obliged to bring a fresh suit against the Receiver, but in that case a large portion of his claim would be barred by the statute of limitation.

Mr. *B. C. Mitter* for the applicant, Kunja Lal Seal. This omission to obtain leave of this Court to sue the Receiver is not a defect of Jurisdiction of the Mofussil Court to entertain the suit, but is merely in the nature of

* Application in Original Suit No. 879 of 1900.