

express stipulation that the holding of the plaintiffs was to be for a certain fixed term only, and that the defendants had, accordingly, full right to remove them from that land at the close of that term.

This appeal must be dismissed with costs.

1869  
DAMANULLA  
SIRKAR  
V.  
MAMUDI  
NASHIO.

*Before Sir Barnes Peacock, Kt., Chief, Justice, and Mr. Justice Mitter.*

IN THE MATTER OF INDRA CHAND DUGAR (PETITIONER) v.  
GOPAL CHANDRA SHETIA AND ANOTHER (OPPOSITE PARTIES).\*

1869  
May 29.

*Execution of Decrees--Jurisdiction.*

A decree of the Court of the Subordinate Judge of Moorshedabad was sent to the Court of the Subordinate Judge of Rajshahye for execution, and certain property was attached in that district. A claimant of the attached property then obtained from the former Court an order on the second Court to send the record back again to Moorshedabad, for the purpose of executing the decree there, on the ground that the judgment-debtor had property in that district: and also on the allegation unsupported by oath that the property sought to be attached in Rajshahye was his.

*Held*, that the Subordinate Judge of Moorshedabad had acted without jurisdiction, and the record must be sent back to the Court of the Subordinate Judge of Rajshahye for execution.

*Held also*, that the claimant had no *locus standi* in the Moorshedabad Court to make such application.

Baboo *Debendra Chandra Ghose* and *Romes Chandra Mitter* for petitioner.

Baboo *Kishen Dayal Roy* for opposite parties.

INDRA Chand Dugar was the decree-holder in an execution case in the Court of the Subordinate Judge of Moorshedabad, in which Gopal Chandra Shetia and Pati Kumari Bibi were the judgment-debtors. Under section 284 and the subsequent sections of Act VIII. of 1859, the decree was transferred to the Court of the Subordinate Judge of Rajshahye for execution. In execution of the decree in Rajshahye, Indra Chand Dugar attached the right title and interest of the judgment-debtor, Gopal Chandra Shetia, in Dehi Halti in the same district.

\* Mentioned in *Rule Nisi*, No. 345 of 1869, from an order of the Subordinate Judge of Moorshedabad, dated the 30th January 1869.

1869  
 INDRA CHAND-  
 DUGAR,  
 v.  
 GOPAL CHAN-  
 DRA SHETIA.

One Roy Dhanpat Sing of Azimgunge in Zilla Moorshedabad, on the 24th of Bhadra 1275 B. S. (1868) applied to the Subordinate Judge of Moorshedabad, for an order on the Subordinate Judge of Rajshahye for the transmission back to the Moorshedabad Court of the record in the said execution case, alleging that the property attached by Indra Chand Dugar in the district of Rajshahye, viz. Dehi Halti, was his right title and interest, and not that of Gopal Chandra Shetia, judgment-debtor; and that Gopal Chandra Shetia had property in the district of Moorshedabad; therefore that the decree should not be executed in a different district.

The Subordinate Judge of Moorshedabad, on the 30th of January 1869, granted the order and directed the Rajshahye Court at the same time to put a stop to all proceedings in connection with the said execution case taken therein on the ground that the decree should not be executed in a district other than Moorshedabad. The Subordinate Judge of Rajshahye, on the 3rd of February 1869, removed the said execution case from the file of his Court, and sent the record thereof to the Court of the Subordinate Judge of Moorshedabad.

On 3rd April 1869, Baboos *Debendra Chandra Ghose* and *Romes Chandra Mitter*, for Indra Chand Dugar, obtained a *rule nisi* to be served on the claimant, Roy Dhanpat Sing, and the defendant, to show cause why the order of the Subordinate Judge of Moorshedabad of the 30th January 1869 should be set aside, on the ground that he had no jurisdiction to pass such an order.

On the 29th May 1869, the rule came on for argument.

PEACOCK, C. J.—In this case a decree was sent from Moorshedabad to Rajshahye to be executed. In execution of that decree property in Rajshahye was seized. Roy Dhanpat Sing claimed that the property belonged to him and not to the judgment-debtor. Upon that the execution-creditor petitioned that Roy Dhanpat Sing might be cited, in order that he might be examined to prove the validity of his claim, and he was called upon by the Rajshahye Court to show cause why he should not attend and be examined. Upon that Roy Dhanpat Sing applied to the Subordinate Judge

of Moorshedabad for an order recalling the decree from the Rajshahye Court, and the Subordinate Judge called upon the execution-creditor to show cause why an order to that effect should not be issued. No affidavit appears to have been filed by Roy Dhanpat Sing in support of his application. If Roy Dhanpat Sing had a just claim to the property, which was seized in Rajshahye, he might have supported that claim by his own oath, and he would have obtained relief in the Rajshahye Court. He had no *locus standi* in the Moorshedabad Court to apply to have the decree re-called, and the Subordinate Judge of Moorshedabad had no jurisdiction to re-call it upon his application. The failure of the execution-creditor to show cause did not give the Subordinate Judge jurisdiction. Under these circumstances the order of the Subordinate Judge, for recalling the decree, must be set aside, and the decree sent back to Rajshahye. The case will be restored to the file of the Rajshahye Court, and will proceed as it would have done if the record had not been removed.

1869  
INDRA CHAND  
DUGAR  
v.  
GOPAL CHAND  
DRA SHETIA.

I may observe that the order of the Subordinate Judge effectually served the interest of Roy Dhanpat Sing ; for after the decree had been returned, the Rajshahye Court determined that it had no jurisdiction to decide on the validity of the claim of Roy Dhanpat Sing.

This rule will be made absolute with costs.

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

MUSST. UMASUNDARI DASI, (OBJECTOR) v. BIRBUL  
MANDAL AND OTHERS (PLAINTIFFS) AND ANANTO SEN  
AND OTHERS (DEFENDANTS).\*

1869  
May 31.

*Rent—Tenure—Act VIII. of 1863, s. 16—Act X. of 1859, s. 77—Incumbrance.*

In a suit for arrears of rent, the defendant set up in defence that the relation of landlord and tenant did not exist, as the tenure of the plaintiffs' superior landlord had been sold for arrears of rent, and that under section 16, Act VIII. of 1863, the plaintiff's tenure had lapsed, and that he had paid rent to the purchaser of the

\* Special Appeal, No. 3066 of 1868, from a decree of the Judge of Beerbhoom dated the 8th August 1868, reversing a Decree of the Deputy Collector of the district, dated the 16th May 1868.