

The judgment of the Court was delivered by

1873

JACKSON, J.—The appellants in this case held a decree against the judgment-debtors. Various applications were made to execute the decree, and on one of them, in September 1869, the sum of Rs. 1,000 was paid. Further applications were afterwards made, on which finally, on the 16th December 1870, it was arranged upon a petition of the judgment debtors and the consent of the decree-holders that a further payment of Rs. 1,000 down should be made, and that the residue of the debt should be paid with interest at the rate of 1 per cent. per month by monthly instalments of Rs. 125.

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NATH MISSEB  
v.  
GOUREE  
KOMUL  
BHUTTA-  
CHARJEE.

The judgment-creditors now seek to set aside the arrangement entered into by mutual agreement, and to execute their original decree as if no such arrangement had been made. The sole ground on which they make this application is that, adverting to the decision of the Full Bench of this Court in *Krishna Kamal Sing v. Hiru Sirdas* (1), the agreement would expose them to certain consequences, viz., the risk of incurring limitation, to which if they had been more prudent, they would not have exposed themselves. It appears to me that this is not a ground upon which the Court executing the decree can be called upon to relieve the appellants from their solemn deliberate agreement. The parties were quite at liberty to enter into such an agreement if they thought fit. There was nothing in law to prevent their doing so. Even if it were in the power of the Court in execution proceedings to do that which is sought of it, there must be something much stronger than the mere want of complete prudence or fore-thought on the part of one of the parties to induce it to do so. I think therefore that the Judge of the Court below was quite right in refusing to allow the decree to be enforced in supersession of such agreement.

The appeal is dismissed. We make no order as to costs.

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

MOONSHEE MAHOMED MUNOOR MEA (PLAINTIFF) v. SREEMUTTY  
JYBUNEE AND ANOTHER (DEFENDANTS).\*

1873  
Feb'y. 26.

*Bengal Act VIII of 1869, s. 102.*

In suits for recovery of rent below Rs. 100, a special appeal lies to the High Court from the decision in appeal by a Subordinate Judge.

See also  
13 B L R 376

This was a suit for recovery of Rs. 47-12, being the arrears of rent of 2 *kanecs* of land in Banini for the year 1275 (1868-69).

The defence was (*inter alia*) that the rent was Rs. 14 only; that Rs. 12 had been paid to the plaintiff, and there was due to the plaintiff, Rs. 2 only.

\* Special Appeal, No. 301 of 1872, from a decree of the Subordinate Judge of Tipperah, dated the 15th September 1871, reversing a decree of the Moonsif of that district, dated the 15th December 1870.

(1) 4 B. L. R., F. B., 101.

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MOONSHEE  
MAHOMED  
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SREEMUTTY  
JYBUNEE.

The Munsif passed a decree in favor of the plaintiff for Rs. 2, and dismissed the claim for the balance.

The plaintiff appealed to the Judge. The appeal was heard by the Subordinate Judge, who confirmed the judgment of the lower Court.

The plaintiff appealed to the High Court,

Baboo *Srinath Banerjee* for the respondents took a preliminary objection to the hearing of the appeal, on the ground that, as the suit was for recovery of rent below Rs. 100, and as it did not involve any question of title, no special appeal lay to the High Court under s. 102, Bengal Act VIII of 1869.

Baboo *Woomes Chunder Banerjee* for the appellant was not called upon.

The judgment of the Court was delivered by

JACKSON, J.—The respondent in this case preferred a preliminary objection that the appeal is taken away by s. 102 of Bengal Act VIII of 1869. That section only relates to suits tried and decided originally or in appeal by the District Judge. The present case has been tried and decided not by the District Judge, but by the Subordinate Judge. The objection taken therefore fails.

*Before Mr. Justice L. S. Jackson and Mr. Justice Mitter.*

NOBOKISTO KOONDO (PLAINTIFF) v. NAZIR MAHOMED SHEIKH  
AND OTHERS (DEFENDANTS).\*

1873  
Feb'y. 27.

*Bengal Act VIII of 1869, s. 102—Appeal to the High Court.*

In a suit for arrears of rent below Rs. 100, an appeal lies to the High Court from a decree passed in appeal by an Additional Judge.

This was a suit for recovery of Rs. 71-6, being the arrears of rent for the years 1273 (1866) to 1276 (1869)

The defence was that the rent was at the rate of Rs. 11-6 *per annum*, and that the whole amount had been paid.

The Munsif found that the rent was at the rate of Rs. 14-8 *per annum*; that the defendants had failed to prove their alleged payment; and that there was due from the defendants to the plaintiff the sum of Rs. 71-6. He accordingly passed a decree in favor of the plaintiff.

One of the defendants appealed to the Judge.

The appeal was heard by the Additional Judge of Jessore, who found that the rent was at the rate of Rs. 11-6 *per annum*, but that the alleged payment had not been proved. He accordingly modified the decree of the lower Court.

The plaintiff appealed to the High Court.

Baboo *Mohender Nath Mitter* for the respondents took a preliminary objection to the hearing of the appeal, on the ground that, as the suit was for

\* Special Appeal, No. 355 of 1872, from a decree of the Additional Judge of Jessore, dated the 26th September 1871, modifying a decree of the Munsif of that district, dated the 28th November 1870.