

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

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Feb'y. 11.

CHUNDER NATH MISSEK AND ANOTHER (DECREE-HOLDERS) v. GOUREE  
KOMUL BHUTTACHARJEE (JUDGMENT-DEBTOR).\*

*Execution of Decree—Agreement to receive Payment by Instalments.*

On the 12th March 1867, Chunder Nath Misser and another obtained a decree against Nilcomul Bhattacharjee and others for payment of a certain sum of money. In September 1869, the property of the judgment-debtor was attached and advertised for sale. On the 18th September 1869, the judgment-debtors paid Rs. 1,000, and upon the consent of the decree-holders, the proceedings were struck off the file. On the 21st of June 1870, the decree-holders again applied for execution, and cause the property of the judgment-debtors to be attached. On the 16th December 1870, an arrangement was entered into between the judgment-debtors and the decree-holders, upon which the judgment-debtors paid Rs. 1,000 in part satisfaction of the decree and agreed to pay the balance by monthly instalments of Rs. 125, with interest at 12 per cent *per annum*, and accordingly a petition containing the terms of the arrangement with the consent of the decree-holders was presented to the Court. On the 13th May 1872 the decree-holders applied for execution for recovery of the balance due upon the decree after deducting the amount which had been received under the arrangement of 16th December 1870.

The Judge found that the judgment-debtors had faithfully acted up to the terms of the arrangement of 16th December 1870, and held that, under the circumstances, the decree-holders were not entitled to cancel the agreement. He accordingly rejected the application.

The decree-holders appealed to the High Court.

Baboo *Kalimohan Doss* and *Rashbehary Ghose*, for the appellants, contended that the subsequent arrangement entered into between the judgment-debtors and the decree-holders could not vary or alter the decree passed in the case—*Krishna Kanyal Sing v. Hiru Sirdar* (1). The decree would be barred by lapse of time, if no execution be allowed to issue. If the judgment-debtors withhold payment of the monthly instalments, no process of execution will be allowed to issue for recovery of the instalments, as more than three years have elapsed since the case was struck off in 1869. The decree-holders were not bound by the agreement, as it was entered into without any consideration.

Baboo *Nulit Chunder Sen*, for the respondents, was not called upon.

\* Miscellaneous Regular Appeal, No. 287 of 1872, from an order of the Judge of Tipperah, dated the 31st July 1872.

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

The judgment of the Court was delivered by

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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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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.

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

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*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.