

1868
 M S T.
 MABARANI
 v.
 NANDA LAL
 MISSE.

to the court for all his acts in respect to the estate, who should be required to render accounts periodically, and be put in possession of all the property in the widow's own possession. Leases which have been given by her cannot be interfered with, as laid down in the Full Bench Ruling, *Gobind Mani Dasi v. Sham Lal Bysak*, *Kali Kumar Chowdry v. Ram Das Shaha*, *Gaur Hari Gui v. Peari Dasi* and *Machocram Sen v. Gaur Hari Gui* (1), unless the lessees be making waste; and if the charge be proved, then the Court can take measures to preserve the property given in lease. There is nothing to prevent the Court appointing the reversioner to be manager, if he be a fit person for the appointment. We modify the orders of the lower Court accordingly. Parties to pay their own costs in these appeals.

Before Mr. Justice Phear and Mr. Justice Hobhouse.

1868
 June 24.

TARASUNDARI BURMONI v, BEHARI LAL ROY*,

Joint Decree—Execution by one of the Judgment Creditors—s. 207 of Act VIII of 1859.

A. & B. obtained a decree against C. A. obtained an order for execution of his share in the amount of the decree. C. pledged immovable property as security to A. who caused it to be sold. B. applied to the Court for her share in the sale proceeds. The Principal Sudder Ameen refused the application. On appeal, *held*, the order for execution ought, in express terms, to have reserved the rights of the other decree-holders to share in the proceeds of the execution. The case was sent back that the Principal Sudder Ameen might apportion the amount realized amongst all the decree-holders.

Rambux Chatlangi and Ramdhan Chatlangi, as purchasers of the share of Damudar Chandra Roy and Ishar Chandra Roy, in a certain decree, took out execution thereof for recovery of Rs. 31,410-9-4, on account of their share in the decree. The judgment-debtors pledged some landed property as security for payment of the same. The Chatlangis caused the property so pledged to be sold.

* Miscellaneous Appeal, No. 194 of 1868, from the decision of the Principal Sudder Ameen of Nuddea.

(1) Cases Nos. 79, 84 201 and 210 of 1862, 7th April 1864.

Tarasundari, the purchaser of another share in the decree, applied for her share of the sale proceeds.

The Principal Sudder Ameen of Nuddea held, that Tarasundari had no right to the proceeds of sale of the property so pledged, out that she had power to realize her money by bringing other landed property to sale.

On appeal it was urged, that the Principal Sudder Ameen was wrong in allowing execution of a joint decree without making any provision for the protection of the appellant's interest; and, secondly, that she should not have been ordered to execute the decree separately.

Baboo Iswar Chandra Chuckerbutty for appellant.

The judgement of the Court was delivered by

PEAR, J.—The Principal Sudder Ameen is wrong. The execution which has been taken out by the Chatlangis has been, as by law it must be, execution of the whole decree; and as the result of the process issued for execution, Rs. 34,000 has been realized, there can be no doubt, that all the persons representing the joint decree holders, are entitled to share in that according to their interests. The order for execution on the application of a part only of the decree holders, ought, in express terms, to have reserved the rights of the other decree-holders to share in the proceeds of execution. It was the fault of the Court that it did not do so, because the duty of reserving those rights is thrown upon the Court by section 207 of Act VIII. of 1859. The present appellants cannot be allowed to suffer in consequence of the omission of the Court in this respect, and they are entitled to have their share in the proceeds of execution, that is, in the Rs. 34,000. The case, therefore, must go back, in order that the Principal Sudder Ameen may apportion the amount realized in execution of the decree among all the decree-holders, including the appellants. The appellants must have their costs both of this and of the lower Court.

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