

other papers showed her to be a *dur-mourosee talookdar*; and it is contended that there is nothing in these descriptions to vitiate her title to collect rents from the defendants.

The tenure was distinctly described in the plaint as a *dur-mourosee jote*, and that the description in the *jumma-wassil-bakee* papers was in terms equivalent to her being a tenant-in-form,—i. e., *dur-mourosee jotedar*. Ordinarily either of these positions may be described by either of these terms. It was therefore an unsubstantial ground on which the Lower Appellate Court threw out the plaintiff's claim.

In regard to the question of partition, the Lower Appellate Court has entirely disregarded the strong point relied on by the first Court,—viz., that the plaintiff was no party thereto, and was therefore not bound by it; and that the ryot defendants also under that partition could not repudiate the relation of landlord and tenant as they too were no parties. On both these points, therefore, we think that the judgment of the Lower Appellate Court must be reversed, and that of the first Court restored.

There still remains another point on which no decision has been pronounced by the Lower Appellate Court,—viz., whether the *jumma* in this case will be Rs. 17-11 annas 2 gundahs, or Rs. 11-12 annas 12 gundahs, and on this point we think the case should be remanded to the Lower Appellate Court for trial.

The plaintiff will be entitled to her costs both of this Court and of the Lower Appellate Court.

Markby, J.—I am of the same opinion. I entirely agree with Mr. Justice Bayley in his view as to the misdescription of the plaintiff's *jote* in this case; and I think that even if there is any misdescription, it is an utterly insufficient ground to dismiss the plaintiff's suit.

The point mainly argued as to the partition seems to me quite clear. Where the rents of a share with certain specified boundaries have been assigned by one shareholder absolutely, by no arrangement between that shareholder and his co-sharers, without the assent of the assignee, can the right of the assignee to collect rents under his assignment be in any way affected.

The respondents must pay the costs of the Court below and of this appeal.

The 19th December 1871.

Present:

The Hon'ble H. V. Bayley and F. B. Kemp,
Judges.

Execution—Construction—Joint Decree—Aliquot Part—Interest—Jurisdiction—Amendment.

Cases Nos. 296, 303, and 304 of 1871.

Miscellaneous Appeals from an order passed by the Additional Subordinate Judge of Mymensingh, dated the 14th July 1871, reversing an order of the Moonsiff of that district, dated the 28th December 1869.

Nubo Kishore Mojoomdar and others (Judgment-debtors) *Appellants*,

versus

Anund Mohun Mojoomdar and others (Decreeholders) *Respondents*.

Baboo Nuleet Chunder Sein for appellants.

Baboos Doorga Mohun Doss and Gopal Lall Mitter for respondents.

In execution, a decree must be construed by its own terms, and not by the plaint. Where a decree is a joint decree, execution cannot proceed upon an application made with a view to execute an aliquot part of the decree.

Where no interest is given in a decree, none can be recovered in execution of that decree.

When an application for execution is contrary to the terms of the decree, the High Court cannot in appeal allow the application to be amended, but the decreeholder must apply to the Lower Court to be allowed to execute it according to its terms.

Kemp, J.—These are appeals on the part of the judgment-debtors from the decision of the Additional Subordinate Judge of Zillah Mymensingh, reversing the decision of the *Sudder Moonsiff* of that district. The decree now sought to be executed was a joint decree.

The first Court very properly held that the application which was made with a view to execute an aliquot part of the decree was contrary to the terms of the decree itself, and therefore execution could not proceed upon such an application. The first Court quoted a decision of this Court to be found in *Weekly Reporter*, Volume XI, page 241, case of *Pooroo Chunder and others vs. Saroda Churn Roy*, dated the 15th March 1869.

The Subordinate Judge observes that the ruling of the High Court referred to by the *Moonsiff* has no bearing on the present case, and looking to the plaint in the original case, he considered that the intention of the judgment-creditors in bringing the suit was to recover the money due in half shares. In other

words, the Subordinate Judge construed the decree by the plaint instead of by its own terms.

We think the ruling of the High Court referred to by the Moonsiff has a distinct bearing on the present case. It is there clearly ruled that execution cannot proceed upon an application made with a view to execute an aliquot part of a decree. We think the Subordinate Judge, in holding that the rule laid down in the case referred to by the Moonsiff had no bearing on the present case, should have given some reasons which led him to that conclusion. The Subordinate Judge is clearly wrong in law in construing the decree by the plaint instead of by its own terms. He has simply to execute the decree according to its own terms. The decree is a joint decree, and therefore no application of the judgment-creditors for execution of an aliquot part of the decree can be entertained.

The second objection is, that the decree-holders are not entitled to interest for the period of the pendency of the suit when the decree sought to be executed did not grant such relief. This objection is also valid. No such interest was given in the decree, and no such interest therefore can be recovered in execution of that decree. If the special respondent wishes to execute the decree according to its terms,—*viz.*, jointly against the judgment-debtors, he should apply to the lower Court to allow him to do so. We cannot, as suggested by the pleader for the special appellant, allow him here to amend the application which in its present form is contrary to the terms of the decree.

The appeal is decreed with costs.

The 19th December 1871.

Present :

The Hon'ble H. V. Bayley and F. B. Kemp,
Judges.

Hindoo Widow—Sale.

Case No. 297 of 1871.

Miscellaneous Appeal from an order passed by the Officiating Judge of Mymensingh, dated the 6th July 1871, affirming an order of the Subordinate Judge of that district, dated the 9th August 1869.

Gobind Narain Dey (Judgment-debtor)
Appellant,

versus

Gour Monee Debia and another (Decree-holders) *Respondents.*

Baboo Sreenath Doss and Nuleet Chunder Sen for Appellant.

No one for Respondents.

A and B were two brothers. A's widow sued B's son, but being unable to carry on the litigation sold a portion of her rights and interests in the suit to G and J, and a joint decree was passed in the names of G and J as well as of the widow. The widow soon afterwards died, and B's son became A's heir. HELD that as A's widow had only a life-interest in her husband's property, on her death her rights and interests ceased as well as those of G and J as decree-holders; and that B's son, the judgment-debtor, became in effect, as A's heir, the sole judgment-creditor and entitled to the whole property.

Bayley, J.—No one appears on the part of the respondents. The serving peon's deposition, however, shews that the notice has been duly served.

It appears that one Bindoo Bashinee sued the special appellant, her husband's brother's son. It is stated to us, and no one appears here to contradict the statement that Bindoo Bashinee not having means to carry on the litigation sold a certain portion of her rights and interests in the suit to Gour Monee and Jugdissuree. A joint decree was passed in their names and in that of Bindoo Bashinee. The last named soon after died. By her death the special appellant, as brother's son, became heir to the husband of Bindoo Bashinee, and the question raised in this special appeal is that Bindoo Bashinee had as widow only a life-interest in the property of her husband, that consequently on her death those rights and interests ceased and determined, and that as the rights and interests of Gour Monee and Jugdissuree were derived from Bindoo Bashinee, they also ceased with her death, and the special appellant became entitled to the whole property as next heir, and therefore the present application for execution by those who have no rights or interests as decree-holders cannot proceed against the special appellant.

We think this objection valid. It is to be remembered that Bindoo Bashinee had only a life-interest in her husband's property, and the special appellant who is the judgment-debtor in the case, becomes in effect as heir to her husband, the sole judgment-creditor and entitled to the whole property.

In this view, the judgment of the Lower Appellate Court is reversed, and this appeal decreed with costs.