

ance can be attached as it does not become the judgment-debtor's property until it is actually due and paid. There is a case similar to this reported in Volume XV., Weekly Reporter, p. 188, *Monessur Doss against Beer Pertap Sahee*, where the Judges say that when an instalment of maintenance, such as this, is about to become due, the Court may make an order for the non-payment of such instalment by the party chargeable and its non-receipt by the judgment-debtor. And this seems to be the utmost limit which the law will allow our going to in this case.

It remains now for the judgment-creditor to make an application to the Court immediately before the money becomes due to the debtor, and ask the Court to grant an injunction that the debtor may not receive the money, but that it may be paid over as it accrues, to the judgment-creditor.

These appeals must be dismissed with costs. Pleader's fees, Rs. 10 in each case.

*Mitter, J.*—I concur.

The 28th April 1875.

*Present :*

The Hon'ble C. Pontifex and E. G. Birch,  
*Judges.*

**Ejectment—Rights of Occupancy—Transferable Tenures.**

Case No. 1042 of 1874.

*Special Appeal from a decision passed by the Judge of Purneah, dated the 15th January 1874, affirming a decision of the Moonsiff of Sahibgunge, dated the 28th October 1873.*

Mrs. M. R. Hyes (Plaintiff), *Appellant*,

*versus*

Moonshee Moneerooddeen Ahung  
(Defendant), *Respondent*.

*Moonshee Mahomed Yusuf* for Appellant.

*Baboo Oomesh Chunder Banerjee* for  
Respondent.

A suit by a landlord for ejectment of the purchaser of a jote, on the ground that the jote was not transfer-

able, having been dismissed by both the lower Courts on the ground that a mere right of occupancy is transferable, the case was remanded by the High Court, in special appeal, with reference to the Full Bench decision in 22 Weekly Reporter, page 22 (which had not been published when the case was decided) for trial of the question whether the defendant was entitled to a higher right than a mere right of occupancy.

*Pontifex, J.*—IN this case the zemindar sues to eject the defendant on the ground that the jote which he occupies is not transferable.

The defendant, in his written statement, asserted that the jote was a transferable jote; that he had purchased it at an auction-sale in execution of a decree against one Dhuniram to whom it had belonged; and that the tenure so acquired by him was mowrosee.

The first Court, among other issues on the merits, raised one as to "whether the defendant was an auction-purchaser of the jote of Dhuniram Sunha; whether Dhuniram had been the jotedar of the disputed lands; and whether his jote was of the nature of a gozashta tenure existing from a long time past, or whether his lease was only a temporary one; and if his lease is a gozashta lease, is the plaintiff entitled to eject him."

The third issue was, whether jote lands can be transferred without the consent of the zemindar.

At the trial of the case the defendant produced witnesses to prove that the jote was a gozashta tenure formerly belonging to Dhuniram, and the first Court, although it found that the land had constituted a jotedaree tenure of Dhuniram, and had been purchased by defendant in execution of a decree, was doubtful as to whether the jote was transferable or not.

The Moonsiff in his judgment says: "It is, however, somewhat doubtful whether the jote of Dhuniram Sunha was a gozashta tenure, and whether he had acquired a right of occupancy thereto, for no conclusive evidence has been adduced by the defendant upon this point, but only some witnesses, who appear to be trustworthy and cognizant of the facts, have been examined by him." Then he goes on to say that hustobood, receipts, and other papers are to be relied on as evidence on this point, but that those filed by the zemindar, plaintiff, in this case, do not appear to him to be trustworthy. He adds that "the plaintiff sues upon two grounds: first, that the lands

“in suit do not constitute the jote of Dhuniram; and, *secondly*, that the jote-right of the said lands cannot be transferred without the consent of the zemindar;” and he says, as to the second point, that the plaintiff has not produced any evidence regarding this fact, as it was incumbent on her to do so; and he finds that, by the custom of the district, jote-lands *are* transferable.

On appeal to the Judge of Purneah, he finds that certain witnesses on the part of the defendant “depose consistently to the occupation of the jote by Dhuniram as a tenant with at least a right of occupancy, and they allege that such jotes are regularly sold by the custom of the place,” and he held that the witnesses were to be believed, and that the jote in question was transferable.

In special appeal the objection taken is that by a late Full Bench decision, reported in 22 Weekly Reporter, page 22, it has been held (subsequently to the decision of the case now under appeal) that a mere right of occupancy under Act X. of 1859 is not transferable, and that, as in the present case, neither of the Courts have found that the right of Dhuniram, which the defendant purchased, was more than a mere right of occupancy, such right cannot be transferable. But in fact each of the Courts below seem to have assumed that a mere right of occupancy was transferable, the case in 22 Weekly Reporter not having then been published, and neither of the Courts considered it necessary to try the question whether the defendant was entitled, as he asserted, to any higher right than a mere right of occupancy.

Under these circumstances, the case must be remanded to the original Court to try whether the tenure of the defendant is a mere right of occupancy under Act VIII. (B. C.) of 1869 or not. If it is, it must be governed by the decision above referred to, and there must be a decree in plaintiff's favour. But, if it is found that there is a higher right than a mere right of occupancy under Act VIII., the Courts below must try whether or not such right is transferable, and decide accordingly.

The costs of this appeal, which are hereby assessed at two gold mohurs, will abide the event.

The 28th April 1875.

*Present :*

The Hon'ble E. G. Birch and G. G. Morris,  
*Judges.*

Act IX. of 1871, s. 7—Limitation—Minor's  
Right of Suit.

Case No. 132 of 1874.

*Regular Appeal from a decision passed by  
the Subordinate Judge of Dinagepore,  
dated the 13th March 1874.*

Sookh Moyee Chowdhraïn (Plaintiff),  
*Appellant,*

*versus*

Raghubendro Narain Chowdhry and others  
(Defendants), *Respondents.*

*Baboos Sreenath Doss, Kalee Mohun Doss,  
and Kishen Dyal Roy for Appellant.*

*Mr. J. T. Woodroffe and Baboos Ashoo-  
tosh Dhur, Mohinee Mohun Roy, and  
Tarinee Kant Bhuttacharjee for Respond-  
ents.*

Where a person, whose right to sue is limited (say) to 12 years, labours under a disability such as is specified in Act IX. of 1871, s. 7, and the disability continues up to his death, which occurs within those 12 years, leaving some (say 8) years to run, his representative in interest has only the remainder of the period of limitation (*i.e.*, 8 years in the case supposed) within which to bring his suit. The fact of the representative being himself a minor does not give him any more time, as he can sue through his guardian or next friend.

*Birch, J.*—THE plaintiff, as widow of Radha Rumon and adoptive mother of one Nurendro Narain Chowdhry, deceased, sues to obtain possession of certain property specified in the schedule to the plaint by right of inheritance, by setting aside a decree based on a deed of solehnama, and also a decree based on a razinama and safinama, all executed by defendant No. 3, Brohmo Moyee, in her capacity as guardian of Radha Rumon, by virtue of which deed and decrees a share of certain properties was alienated. Her allegation is, that Brohmo Moyee had no authority to approve or make such alienations; that they were collusively brought about and were injurious to Radha Rumon and his representatives in estate.

The defendant Brohmo Moyee pleads that the compromise she entered into with defendants 1 and 2 were for the benefit of the minor, her ward, and not in any way prejudicial to her interests. The other defendants 1 and 2 raise various objections as to the right of the plaintiff to institute this suit,