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ed Hindu must, in the present state of the law, be treated for some purposes as his representative, and that a judgment obtained against such a representative is not a mere nullity. Even if it cannot be executed against the estate in the hands of the executor when he has taken out probate, it is at any rate sufficient to enable the plaintiff to bring a suit against the executor in order to have the decree satisfied.

I give this opinion with some hesitation as the subject is one which in its general bearings has not been much considered. But, on the whole, I think that this view of the matter, whilst it meets the justice of the case, is in accordance with decided cases.

I think, therefore, that the decree of the Munsif was right, and should be affirmed, and that this appeal should be dismissed with costs.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

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June 27 and
July 28.

RASHI BEHARY BUNDOPADHYA (DEFENDANT) v. PEARY MOHUN
MOOKERJEE (PLAINTIFF).*

*Landlord and Tenant—Rent Suit—Liability of Tenant—Rent due by former
Tenant - Liability of the Tenure.*

A decree for rent obtained by a landlord against his registered tenant renders the tenure comprised in the decree liable for sale, although such tenure may have passed into other hands than those of the judgment-debtor. The landlord's remedy is, however, in such case, strictly confined to the sale of such tenure under his decree. He cannot make a tenant personally liable for rent which accrued due before such tenant became the owner of the tenure.

The remedies which are provided by the Rent Law for enforcing the payment of rent by sale of the tenure or by distress are remedies *in rem*. The personal liability of one tenant cannot be transferred to another.

IN this case the plaintiff, who was the owner of a half share in a certain patni talook, sued to recover arrears of rent for

* Special Appeal, No. 1072 of 1877, against the decree of H. T. Prinsep, Esq., Judge of Zilla Hooghly, dated the 1st of February 1877, affirming the decree of Baboo Gobind Chunder Ghose, second Munsif of Serampore, dated the 31st of October 1876.

the years 1280—1282 B. S. (1873—1875) due upon certain lands held by the defendant. The plaintiff had already obtained a decree for arrears of rent due in respect of the year 1280 against the heir of the former tenant of these lands; but on discovering that the present defendant was in possession of the tenure, he abandoned the decree and brought the present suit. The defendant stated that he had in the year 1280 purchased the tenure at an auction-sale from the former tenant, and that he was not liable for arrears of rent which accrued before his purchase. The Munsif found that the defendant had bought the right, title, and interest of the former tenant against whom a judgment had been obtained, and therefore that, as the last tenant was admittedly liable to pay the rent for the years in question, the present defendant standing in his shoes was liable to pay the same to the plaintiff, and in support of this cited *Sham Chand Kundu v. Brojonath Pal Chowdhry* (1).

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The defendant appealed to the District Judge, who, affirming the decision of the Munsif, dismissed the appeal with costs. The defendant then appealed to the High Court.

Baboo *Gopeenath Mookerjee* for the appellant cited the case of *Beepin Beharee Biswas v. Judoonath Hazrah* (2) as showing that the date of confirmation of sale was the earliest date from which a purchaser could be made liable for rent.

Baboo *Ashootosh Mookerjee* for the respondent cited *Rughoobur Thakoor v. Mirza Syefoolah Khan* (3) and *Khoobaree Sing v. Rughoobur Rai* (4) as showing the liability of a purchaser for the debts due on the property before his purchase.

The judgment of the High Court was delivered by

GARTH, C. J.—The judgments of both the lower Courts in this case have proceeded upon an erroneous view of the Rent Law.

The suit is brought by the plaintiff, who is the owner of a half share of a patni, to recover from the defendant the rent

(1) 12 B. L. R., 484; S. C., 21 W. R., 94. (3) 23 W. R., 289.

(2) 21 W. R., 367. (4) 2 W. R., 131.

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of that half share (which has been fixed at Rs. 111-3-10 annually), upon the ground that the defendant has become the tenant of the jamma at an auction-sale held on the 12th of Kartick 1280. The rent claimed is from Bysack 1280 to the end of 1282. The defendant admits the plaintiff's right to the rent which accrued due after he (the defendant) purchased the jamma, but disputes the plaintiff's right to recover the rent which accrued due before his purchase. As a matter of fact, the plaintiff did sue and obtain a decree against the heir of the former tenant for the rent due for the year 1280; but he abandoned that decree, and is now trying to recover the same rent from the defendant in this suit.

It was contended before the Munsif, that as the tenure itself under the Rent Law might be made liable for arrears of rent, and as such liability might be enforced against a purchaser of the tenure, the defendant, who in this case only purchased the right, title, and interest of the defaulting tenant, purchased it subject to the defaulting tenant's liability, and was therefore himself subject to be sued for the back rent. The Munsif apparently adopted this view, which was afterwards confirmed by the lower Appellate Court.

But we think that both Courts were wrong. The fallacy of their argument arises from confusing the *liability of the tenure with the personal liability of the tenant*. A landlord may, by obtaining a decree for rent against his registered tenant, bind the tenure itself in such sort, as to make it always liable to be sold for the amount of the decree, although it may be subsequently purchased by a third person. In other words, the tenure thus bound continues subject to sale at the landlord's option, until the amount of the decree has been satisfied, notwithstanding the tenure may pass, by private sale or otherwise, into other hands. This is the result of the Full Bench decision—*Sham Chand Kundu v. Brojonath Pal Chowdhry* (1), upon which the Munsif's judgment proceeds,—and of other cases, which are referred to in the Full Bench judgment, and to which our attention was called during the argument.

(1) 12 B. L. R., 484; S. C., 21 W. R., 94.

In this case it so happens that a decree obtained against the former tenant would not bind the tenure, because the plaintiff is only entitled to a fractional share, and not to the whole, of the patni. But that consideration does not affect the present question. Even if the tenure could have been bound by a decree obtained by the landlord against the registered tenant, that would only enable the present plaintiff to sell the tenure itself to satisfy the arrears. It would not enable him to sue the present defendant personally for rent which accrued due before the present defendant became the purchaser. The remedies which are provided by the Rent Law for enforcing the payment of rent by sale of the tenure or by distress, are remedies *in rem*. The personal liability of one tenant cannot be transferred to another; but each succeeding tenant must be subject to his own liabilities.

The judgment of the Court below will be modified to this extent, that the defendant will only be liable for the rent which accrued due after the date of his purchase, the 12th Kartick 1280, with interest at 12 per cent; and as the only question raised in the lower Appellate Court and in this Court was as to the rent which accrued due before the defendant's purchase, he ought to have his full costs against the plaintiff in those two Courts and in the Court of first instance. The costs which he has to pay will be proportionately reduced.

Decree varied.

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