

The Magistrate refused to issue a process. In his letter to this Court, in showing cause against the rule, he says that there is no criminality in the act of a father taking away his own daughter, and that during his long course of experience as a Magistrate, he has refused many such applications.

We think that the cause shown is not sufficient, inasmuch as the act of the father distinctly falls within the definition of s. 361, Penal Code. He may have had no criminal intention in taking away his own daughter, but the law provides, and the fact is undeniable, that the husband of a Hindu girl of the age of fifteen is her lawful guardian, and taking her away from him without his consent amounts, according to the definition given above, to kidnapping from lawful guardianship. We think, therefore, that the Magistrate must proceed according to law, and, if he believes the complaint, he is bound to issue a process.

*Summons directed to issue.*

Attorneys for complainant: Messrs. Remfry and Rose.

T. A. P.

---

## APPELLATE CIVIL.

---

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Tottenham.*

TARINIPROSAD ROY (JUDGMENT-DEBTOR) v. NARAYAN KUMARI DEBI (DECREE-HOLDER).\*

1889  
December 5.

*Execution of decree—Execution of rent decree obtained against a putnidar—Property other than the tenure proceeded against—Bengal Tenancy Act (VIII of 1885), s. 65—Rent decree.*

Where a landlord obtains a decree for rent against his tenant, which is on the face of it a decree for a sum of money without creating a charge upon the tenure, he is at liberty in execution to bring to sale property of his judgment-debtor other than the tenure itself.

Section 65 of the Bengal Tenancy Act creates a first charge upon the tenure for its rent and puts the landlord in the position of a first mortgagee so far as the rent is concerned, but the tenant remains personally liable for the rent, so that the landlord has a charge upon the tenure for

\*Appeal from Order No. 252 of 1889, against the Order of Baboo Hurro Gobind Mookerjee, Subordinate Judge of Dinapore, dated the 22nd of May 1889.

1889

TARINI-  
PROSAD  
ROY  
v.  
NARAYAN  
KUMARI  
DEBI.

the rent, and he has a remedy against the tenant personally for the debt to him, and he has therefore a right to avail himself of either of these remedies.

THE plaintiff, having obtained a decree against his tenant for rent of a putni-taluq, attached, in execution of this decree, properties belonging to the judgment-debtor other than the putni-taluq in question.

The judgment-debtor put in an objection that, under the terms of the putni-kabuliyat and the provisions of the law, the decree-holder was bound to proceed, in the first instance, against the putni-tenure itself; and then against a certain sum given in deposit by the judgment-debtor.

It appeared that the putni-tenure was put up for sale in execution of this decree, but the sale was postponed at the request of the decree-holder, and was not further proceeded with.

The Subordinate Judge held that, as far as the special agreement in the putni-kabuliyat was concerned, the case was on all fours with that of *Lalit Mohun Roy v. Binodai Dabee* (1), and that as the decree made no reference to the special agreement, and was an ordinary decree for rent, he could not, therefore, go behind this decree and give effect to the terms of the kabuliyat; he further held that there was no provision of law limiting the right of the decree-holder to the sale of the putni-tenure only; and he therefore disallowed the objections.

The judgment-creditor appealed to the High Court.

Baboo *Jasodanand Pramanick*, for the appellant, contended that the decree-holder was bound first of all to proceed against the tenure both under the Rent Law and the Transfer of Property Act.

Baboo *Nilmadhub Sen* for the respondent.

The judgment of the Court (PETHERAM, C.J., and TOTTENHAM, J.) was delivered by

PETHERAM, C.J.—This is a suit which was brought by a landlord against a tenant to recover his rent, and the decree upon the face of it is a decree for a sum of money without charging the tenure with any lien or charge of any kind, and from that I apprehend that it was a suit brought against the tenant person-

(1) I. L. R., 14 Calc., 14.

ally to recover the amount which was due from him to the landlord. This decree having been obtained, the landlord, the decreeholder, makes an application to attach the property of his debtor to answer the decree. The property which he elects to attach is not the tenure, and the question which arises here is whether he was entitled to pursue his remedy against other properties before he had sold the tenure itself.

The only section which can be relied upon by the defendant, the tenant, is s. 65 of the Bengal Tenancy Act. This section provides that a tenant under these circumstances shall not be liable to ejection for arrears, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof and the rent shall be a first charge thereon.

This section, so far as I can see, creates a first charge upon the tenure for the rent of it, and puts the landlord in the position of a first mortgagee, so far as the rent is concerned, but the tenant remains personally liable for the rent. So that the landlord's position is this: he has a mortgage or charge upon the tenure for the rent, and he has a remedy against the tenant personally for the debt to him. That being the case, he has a right to avail himself of either of his remedies. He may, if he chooses, bring an action in which he claims to establish his lien upon the tenure to bring that tenure to sale, notwithstanding any other charge which may have been made upon it, and that whether the tenant had any other property and whether some one else had a charge by way of contractual mortgage upon the tenure.

But if he thinks fit, he need not follow that course. He may bring an action to recover the debt the tenant owes him, in the same way as he might if he were a mortgagee in a case where there was a personal covenant in the mortgage-deed, giving the go-by to the mortgage and getting a personal decree against the debtor for the payment of the money. Having elected that course, he appears to be in the position of an ordinary creditor able to realise his debt by the ordinary forms of attachment and sale of any property which the debtor has subject to any charge which other persons may have upon it. In this particular case the decree is, on the face of it, only a money decree for the pay-

1889

---

TARINI-  
PROSAD  
ROY  
v.  
NARAYAN  
KUMARI  
DEBI.

1889  
 TARINI-  
 PROSAD ROY  
 v.  
 NARAYAN  
 KUMARI  
 DEBI.

ment of the money, and in my opinion may be enforced in any of the modes in which an ordinary money decree may be enforced, either against the person of the debtor or any property of his that may be found. In this view, we think that the view taken by the Subordinate Judge was right, and that this appeal must be dismissed with costs.

T. A. P.

*Appeal dismissed.*

### PRIVY COUNCIL.

*P. C. \**  
 1889  
 May 15,  
 16, and  
 June 29.

HEMMUNI SINGH AND OTHERS (PLAINTIFFS) v. CAUTY AND ANOTHER (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

*Land Registration Act (Bengal Act VII of 1876), s. 7.—Delimitation of land of adjoining proprietors—Correction of entry in register.*

On a claim for the correction of the entry of the names of proprietors in the general register of revenue-paying lands in a district kept in accordance with Bengal Act VII of 1876, the limits of the area of the estate had not been defined, further than by boundaries mentioned in the plaint, which were disputed by the defendants, who were the owners of land adjoining, and who had obtained from the revenue authorities an order for the entry now alleged to be incorrect. The properties were both parts of an ascertained number of bighas, forming a chuckla.

The High Court, while affirming the decision of the Court below in the plaintiffs' favour, ordered a local enquiry, with a view to the accurate delimitation of their estate. This, with the subsequent decree, resulted in the area being defined therein by reference to a map made and marked by an Amin. This was not a just division; for, while it divided the chuckla so as to give the defendants their full share, it went beyond it, to make up the full area of the plaintiffs' share. Their Lordships therefore made a new order, calculated to secure the division of the whole chuckla in due proportions for the purposes of the entry in the register.

APPEAL from a decree (8th March 1882) of the High Court, varying a decree (1st July 1880) of the Subordinate Judge of Bhagalpur.

The present appeal was preferred from a decree which directed a local investigation as to boundaries, for the purpose of ascertaining the correct entry to be made, in accordance with s. 7 of Bengal Act VII of 1876 (the Land Registration Act, 1876), in

\* Present: LORD WATSON, SIR B. PEACOCK, and SIR R. COUCH.