1902

NANDO LAL v. CHUTTERPUT SING.

An application was made some time ago, and a decree transmitted with intimation that no notice under s. 232 had gone to the judgment-debtor. The Murshidabad Court has sent back all papers feeling a difficulty as to notice under s. 232 going from any other Court than the Court which passed the decree. As there is this difficulty, I ask for notice to issue under s. 232 of the Code.

[SALE J. It has been the practice of this Court to consider applications to transmit decrees, not applications for execution, and there is no section which says that on an application to transmit for the purpose of execution in another Court, notice must go. It is only when an application is made for execution.]

But the only section under which an assignee can come in, is under s. 232 of the Code, and that section only provides for an application to the Court which passed the decree. There is no section under which an assignee can apply to transmit for execution to another Court. As the Code now stands, I submit, the assignee must come to the Court which passed the decree. At any rate, rather than run the risk of the judgment-debtor raising this point and incurring costs in the mofussil Courts, I ask in the first place for a notice to issue under s. 232 of the Civil Procedure Code.

SALE J. Very well, let this be treated as an application for execution under s. 232 of the Civil Procedure Code, and let notice issue under that section to the assignee and the judgment-debtor.

Attorney for the applicant. *Romesh Chandra Basu.*

R. G. M.

CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Gupta.

EBRAHIM SIRCAR.

v.

EMPEROR.*

1901

November 15.

Public Servant, receiver appointed under Land Registration Act, whether a—Non-attendance in obedience to order from public servant—Omission to produce

* Criminal Revision Nos. 407, 480, 546, and 547 of 1901, made against the orders passed by P. C. Mitter, Esq., District Magistrate of Rangpur, dated the 28th of March 1901.

document to public servant—Obstructing public servant in discharge of public functions—Disobedience to order duly promulgated by public servant—Persuasion to tenants not to pay rent to Receiver—Penal Code (Act XLV of 1860) ss. 174, 175, 186, and 188—Land Registration Act (VII B.C. of 1876) s. 56.

Held, that a Receiver appointed under s. 56 of the Land Registration Act is not a public servant within the terms of ss. 174, 175, 186 and 188 of the Penal Code.

Held, further, that such a Receiver was not a public servant legally competent to issue an order directing persons to attend before the Collector with their collection papers and rent receipts, and that disobedience to such an order did not constitute an offence either under s. 174 or s. 175 of the Penal Code.

Held, also, that an order by such a Receiver forbidding persons to pay rent to any person other than the Receiver was not an order promulgated by a public servant lawfully empowered to promulgate such order, and that disobedience to such order was not an offence within the terms of s. 188 of the Penal Code.

Held, further, that persuasion addressed to tenants in the absence of such Receiver not to pay rent to him was not an obstruction of the Receiver within the provisions of s. 186 of the Penal Code.

IN this case one Sharojini Debi Chowdhurani applied to the Collector of Rangpur in September 1899, to have her name registered under the Land Registration Act of 1876, as the guardian of her infant son with respect to certain estates in the district of Rangpur. Her petition was objected to by Bidhu Bhusan Mukerjee and certain other persons, in consequence of which the matter was referred to the Civil Court. In the meantime Bidhu Bhusan Mukerjee applied for and obtained the appointment of a Receiver under s. 56 of Bengal Act VII of 1876, to look after the said estates. The Receiver submitted a report to the Collector complaining against the petitioners. The Collector sanctioned and directed the prosecution of the petitioners. Some of the petitioners, who were tenants, were charged under s. 188 of the Penal Code for disobeying an order made by the Receiver forbidding them to pay rent to any person other than the Receiver. Others tenants also were charged under ss. 174 and 175 of the Penal Code for disobeying an order made by the Receiver to attend before the Collector with their collection papers and rent receipts. The remaining petitioners, who were the servants of Sharojini Debi Chowdhurani, were charged under s. 186 of

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the Penal Code for obstructing the Receiver in collecting rents by persuading the tenants not to pay rent to him.

Babu Saroda Charan Mitter and *Babu Dwarkanath Mitter* for the petitioners.

HARINGTON and GUPTA JJ. In case No. 407, a rule was granted calling upon the District Magistrate to show cause why the proceedings taken against the petitioners under s. 186, Penal Code, should not be quashed. The rule was granted on several grounds, but there is one ground which is, in our opinion, conclusive. The proceeding under s. 186 was for obstructing the Receiver of an estate in collecting rents. The only acts that are alleged against the petitioners are that they persuaded and urged the tenants not to pay rent to the Receiver. Assuming that they did so persuade the tenants, in our opinion such persuasion addressed to the tenants in the absence of the Receiver does not constitute an obstruction of the Receiver within the meaning of s. 186 of the Penal Code.

In case No. 480, a rule, similar to the one in the last case, was granted for the purpose of setting aside a proceeding under s. 188 of the Penal Code. In that case it was alleged that the petitioners had disobeyed an order made by the Receiver forbidding them to pay rent to any person other than the Receiver. The proceeding does not allege under what section, or by virtue of what authority, the Receiver purported to make this order. In our opinion, an order made by the Receiver to the effect I have stated cannot be described as an order promulgated by a public servant lawfully empowered to promulgate such order. The order, therefore, does not come within the terms of s. 188 of the Penal Code. Moreover, it is not alleged that the disobedience caused obstruction, annoyance, or injury or risk of obstruction, annoyance or injury to any persons lawfully employed. On two grounds, therefore, it fails to come within the terms of that section. The rule, therefore, for setting it aside will be made absolute.

In the remaining two cases which arise out of the same transaction, namely, Nos. 546 and 547, similar rules were granted for setting aside the proceedings taken against the petitioners

under ss. 174 and 175 of the Penal Code; the allegations in these proceedings being that the petitioners had been ordered to attend before the Collectors with their collection papers and with their rent receipts, and that they had disobeyed these orders. It is not alleged how the petitioners in either of these two cases, are legally bound either to attend with their collection papers in the one case, or to attend with their rent receipts in the other, nor can it be successfully contended that a Receiver is a public servant legally competent to issue such an order. On those grounds, the proceedings in the two cases which I have last mentioned must be set aside.

The result, therefore, will be that in all these four cases which arise out of the same transaction and have been heard together, the rules for setting aside the proceedings will be made absolute.

D.S. *Rules made absolute.*

APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pratt.

JADU MANI BOISTABEE

v.

RAM KUMAR CHAKRAVARTI.*

Presidency Small Cause Court's Act (XV of 1882 as amended by Act I of 1895) s. 38— New trial—Civil Procedure Code (Act XIV of 1882) s. 373— Withdrawal of a suit—Jurisdiction of the Small Cause Court to pass an order under section 373 of the Civil Procedure Code after granting a new trial.

1902 *February* 6.

A suit having been dismissed by a Judge of the Small Cause Court at Calcutta, the plaintiff made an application for a new trial, which was granted, the suit being allowed to be withdrawn under s. 373 of the Civil Procedure Code. On a rule obtained by the defendant, in the High Court.

Held, that, although the Judges of the Small Cause Court, when granting the application for a new trial, were exercising their revisional powers, yet, as soon as

* Civil Rule No. 2584 of 1901.