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to the execution of a decree but rather to the non-execution of a decree. We cannot accept this view of the matter. An order setting aside a sale is as much an order relating to the execution of a decree as an order confirming a sale. But however that may be, we have not to interpret the provisions of cl. (*c*) of s. 244 of the Code of Civil Procedure but the provisions of s. 153 of the Bengal Tenancy Act. The question in this case is whether the order appealed against is "an order passed in a suit instituted by a landlord for the recovery of rent." That question seems to be concluded by the view of the learned Judges who decided the case of *Shyama Charan Mitter* v. *Debendra Nath Mukerjee* (1) in which it is said that the word "suit" in s. 153 of the Bengal Tenancy Act was not used "in its narrow sense as being terminated by the decree made by the First Court," but "in its broad sense, as including not only the stages of a suit down to its termination by the decree of the First Court, but also its appellate stage, and also proceedings in execution of the decree made in the suit." That being so, and as we see no reason to dissent from this view, we must hold that no second appeal lies.

The appeal is dismissed with costs.

M. N. R. *Appeal dismissed.*

Before Mr. Justice Rampini and Mr. Justice Pratt.

1900 *June* 5.

SUBADINI (PLAINTIFF) v. DURGA CHARAN LAW AND OTHERS (DEFENDANTS).°

Landlord and tenant—Ejectment—Transfer of Property Act (IV of 1882) s. 106, cl. 2—Notice to quit—Service of notice through post office by registered letter—Sufficiency of notice—Monthly tenancy—Clear days.

Service of notice by a registered letter through the post office is not necessarily a non-compliance with the provisions of the second clause of s. 106 of the Transfer of Property Act. *Rajoni Bibi* v. *Hafisonnissa Bibi* (2) followed.

The fifteen days' notice referred to in s 106 of the Transfer of Property Act means notice of fifteen *clear* days.

° Appeal from Appellate Decree No. 1519 of 1898, against the decree of Babu Ram Gopal Chaki, Subordinate Judge of Jessore, dated the 2nd of June 1898, affirming the decree of Babu Kali Das Mukerjee, Additional Munsif of Jessore, dated the 31st of January 1898.

(1) (1900) I. L. R., 27 Calc., 484.
(2) (1900) 4 C. W. N., 572.

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THIS appeal arose out of an action for ejectment. The plaintiff alleged that the disputed land, situated within the Municipality of Jessore, was let out to the defendant No. 4 conditionally for dwelling purposes, but without any power of alienation; that the said defendant having given up the tenancy and left the place, he wanted to take khas possession of the land, when he was resisted by the defendants 1 to 3, who alleged that they had purchased the tenancy from the defendant No. 4; that thereupon the plaintiff served notices on the defendants to quit the premises, and although the terms thereof had expired, the defendants were still holding possession of the land. The plaintiff accordingly prayed for declaration of her title and for possession of the disputed land after ejecting the defendants.

The defendants 1 to 3 contended, *inter alia*, that the notice to quit was not valid and had not been served according to law, that the tenancy was transferable, and that they were not liable to be ejected during the life-time of the defendant No. 4.

It was proved that three separate notices to quit, in registered covers, addressed to the defendants 1 to 3, were delivered through the post office, and received by the said defendants.

The Munsif found that the notices had been duly served but held that the tenancy was a yearly one, and that six months' notice was necessary. He further held that the plaintiff was not entitled to khas possession during the lifetime of the defendant No. 4, and dismissed the suit.

Both the parties appealed; and on appeal the Subordinate Judge held that the mode of serving notice as prescribed by s. 106 of the Transfer of Property Act had not been followed in this case, and that there was nothing to show that the copies of the notice filed in the record were true copies of the notices said to have been posted. He also held that, although the tenancy was determinable by 15 days' notice expiring with the end of a month of tenancy, as the copies of the notices posted were delivered on the 16th Falgoon, the defendants got only 14 days' notice instead of one of 15 days' expiring with the end of the month, and dismissed both the appeals.

The plaintiff appealed to the High Court.

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Dr. *Asutosh Mukerjee* and Babu *Jnanendra Nath Bose*, for the appellant.

Babus *Baikanta Nath Pal*, and Babu *Debendra Nath Ghose*, for the respondents.

1900, JUNE 5. The judgment of the High Court (RAMPINI and PRATT, JJ.) was as follows :—

This is an appeal from a decision of the Subordinate Judge of Jessore, dated the 2nd of June 1898.

The suit is one for ejectment of a tenant, or rather the transferees of a former tenant, who has abandoned the land, and is no longer in possession of it.

The Subordinate Judge has dismissed the suit, holding that notice to quit has not been served upon the defendants Nos. 1 to 3, and further that the notice that was served upon the defendants was not properly served under the provisions of s. 106 of the Transfer of Property Act. He has also held that the notice was insufficient, as the plaintiff did not give the defendants 15 clear days' notice to quit. It is to be observed that the Subordinate Judge has found that the defendant's tenancy is one of a monthly nature and that it can be put an end to by 15 days' notice. There is no cross appeal against this finding.

We think that in some respects the Subordinate Judge is wrong. In the first place, he says that service by registered letter through the post office is not a proper service of the notice to quit under s. 106 of the Transfer of Property Act. We are unable to concur with him in this view. It is true that the second clause of s. 106 says that the notice under this section must be "tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property." Now, service of notice by a registered letter through the post office is not necessarily bad, and is not necessarily a non-compliance with the provisions of the second clause of the section. If there were evidence in this case that the *dâk* peon tendered or delivered the notice either personally to the party, or to one of his family, or to his servant, then we do not see that the service through the post office would not be

a sufficient compliance with the provisions of the section, and in support of this view we would cite the case of *Rajoni Bibi* v. *Hafisonnissa Bibi* (1), in which a similar view has been taken by another Division Bench of this Court. In the present case the notice has evidently been served on the defendants Nos. 1 to 3, inasmuch as the receipts for the registered letters have been produced, signed by each of them, and although the *dák* peon has not been examined, still there would seem no reason to doubt that the notices were duly served under the provisions of the Act. But it is not necessary for us to come to any finding on this point. It is sufficient for us to say that we do not think that the Subordinate Judge is correct in holding that service of notice to quit by registered letter cannot be a sufficient compliance with the provisions of s. 106.

Then, the Subordinate Judge has said that there is no legal evidence that the three copies of the notice served on the three defendants were true copies of the notice filed on the record. We do not know why the Subordinate Judge has come to this conclusion : because there is evidence on the record in the deposition of the *Am-Mookhtar* of the plaintiff that the copy produced is the notice that was served on the defendants ; by which he undoubtedly means that the notices served on them were in the same terms as the document found on the record.

A third point is whether the defendants had 15 days' clear notice to quit. The pleader for the appellant maintains that under s. 106, the defendants were entitled to 15 days' notice but not to 15 clear days' notice; and in support of this view he cites the following three English cases: *Glassington* v. *Rawlins* (2), *Castle* v. *Burditt* (3), and *Migotti* v. *Colvill* (4). The last of these is the case of a prisoner who was held entitled to be released on the 14th day of the period of 14 days' imprisonment to which he had been sentenced. The same rule is observed in this country ; but we do not think that the case of a prisoner can throw any light on the provisions of s. 106 of the Transfer of Property Act. Nor do we think that the

(1) (1900) 4 C. W. N., 572. [See also the case of *Jogendro Chunder Ghose* v. *Dwarka Nath Karmokar*, I. L. R., 15 Calc., 681.—*Rep.*]

(2) (1803) 3 East, 406.

(3) (1790) D. & E., 623.

(4) (1879) L. R., 4 C. P. D., 233.

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English cases cited by the learned pleader for the appellant can assist us in any way in interpreting the provisions of that section. In the absence of any Indian authorities to the contrary, we must hold that the 15 days' notice referred to in the section means 15 clear days, and we do not think that the terms of this section have been complied with by the plaintiff. In this case the plaintiff served his notices on the defendants on the 16th Falgoon, and required them to quit the land on the 30th of the same month, so the defendants had only 14 clear days' notice and the notice to quit is bad.

On this ground then we must affirm the decree of the Lower Appellate Court. The appeal is accordingly dismissed with costs.

M. N. R. *Appeal dismissed.*

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Banerjee.

1900. *August* 29.

BHOLANATH DASS AND ANOTHER (JUDGMENT-DEBTORS) *v.* PRAFULLA NATH KUNDU CHOWDHRY (DECREE-HOLDER).*

Res judicata—Order in execution of decree—Limitation—Previous application for execution refused and judgment-debtor's objection as to limitation disallowed—Effect of such an order in a subsequent application for execution.

On an application for execution an order for attachment having been issued, the judgment-debtor objected to the execution on the ground that it was barred by limitation. After several adjournments granted at the instance of the decree-holder, neither party having appeared at the date of hearing, the Court by its order refused the application for execution and disallowed the objection of the judgment-debtor. On a subsequent application by the decree-holder the judgment-debtor again objected to the execution on the ground that, inasmuch as the previous application was barred by limitation, the subsequent application was also barred. *Held*, that the judgment-debtor was not precluded from raising the objection that the previous application was barred by limitation.

Mungul Pershad Dichit v. *Grija Kant Lahiri* (1) distinguished.

* Appeal from Order No. 92 of 1900, against the order of H. R. H. Coxe, District Judge of Hooghly, dated the 8th of December 1897, reversing the order of Babu Gopal Krishna Ghose, Munsif of Howrah, dated the 31st of August 1899.

(1) (1881) I. L. R., 8 Calc., 51 ; L. R., 8 I. A., 123.