

1900  
August 2.

Before Mr. Justice Rampini and Mr. Justice Pratt.

MONMOHINI DAS, WIDOW OF GOLAP CHAND SAHA (DECREE HOLDER)  
v. LAKHINARAIN CHANDRA AND OTHERS (JUDGMENT-DEBTORS).<sup>\*</sup>

*Second appeal—Bengal Tenancy Act (VIII of 1885), s. 153—Landlord and tenant—Suit for rent, order in—Order setting aside a sale—Rent decree valued at less than Rs. 100—Execution of decree—Civil Procedure Code (Act XIV of 1882), ss. 244, 588 (16).*

No appeal lies from an order passed by a District Judge setting aside a sale in execution of an *ex parte* decree for rent valued at less than one hundred rupees. *Shyama Charan Mitter v. Debendra Nath Mukerjee* (1) followed.

*Semble* :—An order setting aside a sale is as much an order relating to the execution of a decree as an order confirming a sale.

THIS appeal arose out of an application under ss. 244 and 311 of the Civil Procedure Code to set aside a sale on the ground of irregularity and fraud. The sale took place in execution of a decree passed in a suit for recovery of rent valued at about Rs. 15, under the provisions of the Bengal Tenancy Act. The Munsif rejected the application, holding that there was no ground for setting aside the sale.

The judgment-debtors appealed to the District Judge, who held that there was grave irregularity as well as deliberate undervaluation of the property by the decree holder, who had himself purchased the property at the execution sale. The District Judge accordingly decreed the appeal and set aside the sale.

The decree-holder appealed to the High Court.

Babu *Baidya Nath Dutt*, for the appellant.

Babu *Karuna Sindhu Mukerjee* (with him Dr. *Asutosh Mukerjee*), for the respondents.

Babu *Karuna Sindhu Mukerjee* took a preliminary objection that no second appeal lay in this case to the High Court.

\* Appeal from Order No. 39 of 1900, against the order of B. L. Gupta, Esq., District Judge of Burdwan, dated the 21st of November 1899, reversing the order of Babu Purno Chunder Chowdhry, Munsif of Katwa, dated the 29th of June 1899.

1900, AUGUST 2. The judgment of the High Court (RAMPINI and PRATT, JJ.), was as follows :—

This is an appeal against an order of the District Judge of Burdwan, dated the 21st of November 1899.

The order is one setting aside a sale held in execution of a decree for arrears for a sum of Rs. 15.

A preliminary objection has been taken to the hearing of this appeal, namely, that the order passed by the District Judge setting aside the sale was passed under s. 588, cl. (16), of the Code of Civil Procedure, and that, therefore, no second appeal lies to this Court. But the learned pleader for the appellant replies that in this case the sale was set aside on the ground of fraud, and that therefore the order of the District Judge was not passed under s. 588, cl. (16), Code of Civil Procedure, but under s. 244, Code of Civil Procedure; and that therefore a second appeal does lie to this Court. We think that this contention of the pleader for the appellant is correct, as, on examining the application for the setting aside of the sale, we see that a complaint of fraud was made in it.

But a further preliminary objection is taken by the pleader for the respondent, namely, that if the order of the District Judge was one under s. 244, Code of Civil Procedure, then it was an order passed in a suit for arrears of rent for a sum of less than Rs. 100, and as none of the questions referred to in the proviso to s. 153 of the Bengal Tenancy Act were decided, no second appeal lies to this Court. And in support of this contention, the pleader for the respondent cites the case of *Shyama Charan Mitter v. Debendra Nath Mukerjee* (1). We think that this contention must prevail. It is clear that the decree in execution of which the order appealed against was passed, was a decree for less than Rs. 100; and as it was an *ex parte* decree, none of the questions referred to in the proviso to s. 153 of the Bengal Tenancy Act can possibly have been decided.

The pleader for the appellant says that the order was one for the setting aside of a sale, and that therefore it does not relate

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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.*

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 June 5.

SUBADINI (PLAINTIFF) v. DURGA CHARAN LAW AND OTHERS  
 (DEFENDANTS).<sup>o</sup>

*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 regis-  
 tered 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. Hafisonnissâ Bibi* (2) followed.

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

<sup>o</sup> 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.