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the party would be without remedy, because according to the practice of the Allahabad High Court, as indicated in *Sheo Nath Singh* v. *Ram Din Singh* (1), the party aggrieved by the order of remand would not be entitled in an appeal against the final decree to limit his grounds to the order of remand alone. No such rule, however, prevails in this Court; in our opinion, if the final decree has been made, it is not only open to but is the duty of the party who is aggrieved by the order of remand, which up to that stage has not been questioned by way of appeal, to prefer an appeal against the final decree and to question the validity of the interlocutory order.

The appeal, therefore, fails and must be dismissed with costs.

S. A. A. A. *Appeal dismissed.*

(1) (1895) I. L. R. 18 All. 19.

CIVIL RULE.

Before Mr. Justice Doss and Mr. Justice Richardson.

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March 19.

BIPRA DAS DEY

v.

RAJARAM BANERJEE.*

Bengal Tenancy Act (VIII of 1885) s. 170—Decree for arrears of rent due on two holdings—Claim, whether maintainable—Civil Procedure Code (Act XIV of 1882) s. 278.

Section 170 of the Bengal Tenancy Act (VIII of 1885) does not apply to a decree obtained by a co-sharer landlord for his share of rent in respect of two holdings; and that, therefore, when the holdings are attached in execution of such a decree, a claim under section 278 of the Code of Civil Procedure is maintainable.

Hridaynath Das Chowdhry v. *Krishna Prasad Sircar* (1) and *Baikanta Nath Roy* v. *Thakur Debendro Nath Sahi* (2) referred to.

RULE granted to the petitioner, Bipra Das Dey.

The opposite party along with his other co-sharers brought a suit for recovery of arrears of rent in respect of two holdings.

* Civil Rule No. 498 of 1909, against the order of Charu Chandra Mitra, Munsif, 1st Court of Bankura, dated Jan. 25, 1909.

(1) (1907) I. L. R. 34 Calc. 298; 11 C. W. N. 497.

(2) (1906) 11 C. W. N. 676.

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Subsequently the said co-sharers having refused to join as plaintiffs were transferred to the category of *pro formâ* defendants. A decree was passed in favour of the opposite party for a share of rent due to them alone. In execution of that decree the holdings were attached. Thereupon, the petitioner preferred a claim under section 278 of the Code of Civil Procedure in the Court of the Munsif of Bankura. The learned Munsif having held that the claim was barred under section 170 of the Bengal Tenancy Act, rejected the claim preferred by the petitioner by an order dated the 25th January 1909. Against this order the petitioner moved the High Court and obtained the Rule.

Babu Sarat Chandra Bysack (for *Babu Digambar Chatterjee*), for the petitioner. Chapter XIV of the Bengal Tenancy Act applies only in cases in which a holding is attached and put up to sale for its own arrears and not for any other claim. Section 170, being one of the sections in Chapter XIV, cannot apply to cases where a holding is attached not only for its own arrears but also for other claims: *Hridaynath Das Chowdhry* v. *Krishna Prasad Sircar* (1) and *Baikanta Nath Roy* v. *Thakur Debendrao Nath Sahi* (2). The language of section 170, which prohibits the application of section 278, Civil Procedure Code, to the case of a holding attached in execution of a decree for arrears thereon, also shows that it can have no application in the present case, as neither of the two holdings can be said to have been attached in execution of a decree for its own arrears only; each holding was attached in execution of a decree not only for its own arrears but also for arrears due for the other.

Babu Nalini Ranjan Chatterjee, for the opposite party. The cases cited by the other side do not apply to the facts of the present case. There has been no sale yet nor any proceedings taken for sale of the two holdings. They have been merely attached. The cases of *Hridaynath Das Chowdhry*

(1) (1907) I. L. R. 34 Cal. 298; 11 C. W. N. 497.

(2) (1906) 11 C. W. N. 676.

v. *Krishna Prasad Sircar* (1) and *Nanda Lal Mukherji* v. *Sadhu Charan Khan* (2) go to show that a decree for rent obtained in respect of several holdings is a valid decree under the Bengal Tenancy Act. Section 170 of the Act bars a claim to the holdings attached under such a decree. The question whether the two holdings can be sold under such a decree under the special procedure laid down in the Bengal Tenancy Act, does not arise at this stage.

Doss J. This is a Rule calling upon the opposite party to show cause why the order of the Munsif of Bankura, dated the 25th January 1909, should not be set aside.

It appears that the opposite party who were the plaintiffs in the Court below brought a suit along with the *pro formâ* defendants, who were their co-sharers, for arrears of rent due on two holdings. These *pro formâ* defendants upon their refusing to join the other plaintiffs in the suit were subsequently transposed to the category of defendants. The decree which the plaintiff obtained was one for a share of the rent due to them alone. In the execution of that decree, the two holdings were attached. Thereupon, the petitioner preferred a claim under section 278 of the Civil Procedure Code. The opposite party objected that the claim was barred under section 170 of the Bengal Tenancy Act. The Court below has given effect to that objection.

I am of opinion that the order of the Munsif cannot be sustained.

Section 170 is one of the sections in Chapter XIV of the Bengal Tenancy Act, and it cannot, therefore, apply to any case in which the decree is not of such a nature as is contemplated in that Chapter. The decree in this case, as I have already said, was for arrears of rent due in respect of two holdings. Therefore, when either of the two holdings was attached, it was attached in execution of a decree passed not only for arrears due on one of the two holdings but also for

(1) (1907) I. L. R. 34 Cal. 298; 11 C. W. N. 497.

(2) (1907) 7 C. L. J. 96.

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arrears due on the other holding. It follows that section 170 of the Bengal Tenancy Act cannot apply to this case.

This view gains support from the *ratio decidendi* of the judgments in the case of *Hridaynath Das Chowdhry* v. *Krishna Prasad Sircar* (1) and in that of *Baikanta Nath Roy* v. *Thakur Debendra Nath Sahi* (2).

The order of the Court below is, therefore, set aside and this Rule is made absolute with costs.

RICHARDSON J. I agree.

S. C. C. *Rule absolute.*

(1) (1907) I. L. R. 34 Calc. 298; 11 C. W. N. 497.

(2) (1906) 11 C. W. N. 676.

APPELLATE CIVIL.

Before Mr. Justice Mookerjee and Mr. Justice Carnduff.

1909

March 30.

JAGON RAM MARWARI

v.

MAHADEO PROSAD SAHU.*

Minor—Contract with Minor—Benefit of Minor—What are 'Necessaries'—Wedding Presents—Guardian, Discharge or Death of—Majority Act (IX of 1875) s. 3.—Guardians and Wards Act (VIII of 1890) s. 52.

Where a guardian has once been validly appointed or declared, the minority does not cease till the attainment of 21 years by the ward, and it is immaterial whether the guardian dies or is removed, or otherwise ceases to act.

Rudra Prokash Misser v. *Bhola Nath Mukherjee* (1), *Khwahish Ali* v. *Surju Prasad Singh* (2), *Gordhandas* v. *Harivallubhdas* (3) and *Gopal Chunder Bose* v. *Gonesh Chunder Sremani* (4) referred to.

Patesri v. *Champa Lal* (5) dissented from.

* Appeal from Appellate Decree, No. 1334 of 1907, from a decree of R. L. Ross, District Judge of Mozaffarpur, dated March 27, 1907, affirming the decree of Purna Chandra Chowdhuri, Subordinate Judge of Mozaffarpur, dated Dec. 22, 1906.

(1) (1886) I. L. R. 12 Calc. 612.

(2) (1881) I. L. R. 3 All. 598.

(3) (1896) I. L. R. 21 Bom. 281.

(4) (1905) 4 C. L. J. 112.

(5) (1891) 11 All. W. N. 118.