

## APPELLATE CIVIL.

*Before Mookerjee and Beacheroff JJ.*

MADANMOHAN NATH SAHI DEO

v.

PROTAP UDAI NATH SAHI DEO.\*

1912

June 21.

*Execution of Decree—Rent decree—Sale—Encumbrances by way of maintenance grant—Portion of tenure in charge of the Encumbered Estates Act authorities exempted from sale by Commissioner—Effect of the order of exemption—Chota Nagpur Landlord and Tenant Procedure Act (Beng. I of 1879), s. 123—Chota Nagpur Tenancy Act (Beng. VI of 1908), s. 208—General Clauses Act (Beng. I of 1899), s. 8, cl. (e)—Rent Recovery Act (Beng. VIII of 1865), ss. 4, 5 and 16.*

When an application in execution of a rent decree was made for the sale of all the villages comprised in a tenure, but the Commissioner, for reasons sufficient in his opinion, directed the exemption of some of the villages from the sale :—

*Held*, that the decree-holder was not deprived of his right to execute his decree, which must be executed as a decree for rent against the unexempted portion of the tenure under the Bengal Rent Recovery Act of 1865. The effect of a sale of the unexempted portion would be to pass the property to the purchaser free of all encumbrances.

*Dwarkanath Chuckerbutty v. Dhun Monee Chowdhraim* (1), *Sham Chand Mitter v. Juggut Chundra Sircar* (2) referred to.

APPEAL by the defendant, Thakur Madanmohan Nath Sahi Deo.

This was an appeal arising out of an application for execution. Thakur Madanmohan Nath Sahi Deo was the holder of a certain tenure in respect of which one Protap Udai Nath Sahi Deo brought a suit for arrears

\* Appeal from Original Order No. 228 of 1912, against the decision of Charu Chandra Mookerjee, Deputy Collector, Ranchi, dated May 8, 1912.

(1) (1871) 15 W. R. 524.

(2) (1874) 22 W. R. 541.

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of rent, and obtained a decree on the 19th April, 1905. On the 28th November, 1910, the plaintiff applied for execution of his decree. The defendant had, prior to this application, created on a part of his tenure encumbrances by way of maintenance grants in favour of his dependents in respect of some of the villages comprised in his tenure and at the time of the application for execution the properties of these maintenance holders were under the charge of the Encumbered Estates Act authorities. On an application made by the authorities for exemption of the said properties under s. 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, the Deputy Commissioner recommended the order of exemption and on the 30th March, 1911, the order was accordingly made. On the 18th April, 1912, the defendant filed his objection under s. 47 of the Code of Civil Procedure, 1908, against the order of execution, and on the 8th May, 1912, his petition was dismissed and the sale was ordered to be proceeded with. Thereupon, the defendant appealed to the High Court.

*Babu Bepin Chandra Mallick*, for the appellant. My first contention is that a portion of the tenure cannot be sold in execution of a rent decree against the entire tenure. Under the provisions of sections 4 and 16 of the Rent Recovery Act, sales under that Act should be with respect to entire tenures. In this suit a portion of the tenure was ordered by the Commissioner to be exempted, and consequently the decree-holder cannot execute his decree as a decree for rent under that Act. It is only in the case where the decree-holder seeks to execute a decree for rent of a fraction of a tenure that an order for exemption can be made in respect of a part of the tenure: see *Dwarkanath Chuckerbutty v. Dhun Monee Chowdhraïn* (1).

My next contention is that, the decree-holder having obtained an order for sale of the unexempted portion of the tenure, he cannot apportion the rent in respect thereof without the consent of all persons interested. An apportionment without such consent would cause irreparable damage and material loss to the appellant. The plaintiff has no right in apportioning the rent. Even if there be any power to separate the tenures—which power, I contend, no one has—the apportioning must be in our presence.

Lastly, I contend that a fresh proclamation ought to be issued, as a portion of the properties specified in the sale proclamation has been excluded from the sale: see section 5 of the Rent Recovery Act.

*Babu Jogesh Chandra Dey*, for the respondent. As regards the first contention, my submission is that the exemption of a part of a tenure enables the respondent to treat the remainder as a whole, and under the Chota Nagpur Landlord and Tenant Procedure Act (Beng. I of 1879) the whole tenure must pass. Under the provisions of the General Clauses Act (Beng. I of 1899), s. 8, this Act and not the Chota Nagpur Tenancy Act (Beng. VI of 1908) applies. I rely on the provisions of s. 123 of Act I of 1879, read with the provisions of the Rent Recovery Act (Beng. VIII of 1865) and also on the Full Bench case of *Sham Chand Mitter v. Juggut Chundra Sircar* (1).

As regards the second contention, no apportionment has, as a matter of fact, yet been made. The respondent took out execution of the whole property and all the persons interested were present all along.

*Babu Bepin Chandra Mallick*, in reply. The case of *Sham Chand Mitter v. Juggut Chundra Sircar* (1) supports my contention.

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MOOKERJEE AND BEACHCROFT, JJ. This appeal raises a question of first impression as to the construction of section 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879. It appears that the respondent obtained a decree for rent against the appellant in respect of a tenure on the 19th April, 1905. On the 28th November, 1910, the application for execution, now under consideration, was presented. The judgment-debtor, tenure-holder, had created, on a part of his tenure, encumbrances by way of maintenance grants in favour of his dependants. The properties of these maintenance holders were at the time under the charge of the Encumbered Estates Act authorities. They applied for exemption of the villages comprised in the maintenance grants under section 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879. Upon the recommendation of the Deputy Commissioner, the order of exemption was made by the Commissioner on the 30th March, 1911. The question in controversy now is, what is the precise effect of this order of exemption.

Before we determine this question, it is necessary to consider in the first instance by what statutory provisions the matter before us is governed. The Commissioner made his order for exemption ostensibly under section 208 of the Chota Nagpur Tenancy Act, 1908. In our opinion, the order in question could not have been made under that section; but this does not affect the validity of the order, inasmuch as it could have been made under section 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879. Sub-section (1) of section 208 of the Chota Nagpur Tenancy Act, 1908, shows that the provisions contained therein apply to cases of execution of decrees passed by the Deputy Commissioner under that Act. The decree now under execution was

passed prior to the commencement of the Chota Nagpur Tenancy Act, 1908. Consequently, under section 8, clause (e) of the Bengal General Clauses Act, 1899, the provision applicable is that contained in section 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, and the effect of that section we now proceed to consider.

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Section 123 provides that if the decree of which execution is sought is for arrears of rent in respect of a tenure, the decree-holder may make application for the sale of such tenure, and the tenure may, thereupon, be brought to sale in execution of the decree according to the provisions for the sale of under tenures contained in the Bengal Rent Recovery Act, 1865; and all the provisions of that Act shall, as far as may be, apply. This is followed by a proviso to the effect that the Commissioner may by order, in any case in which he may consider it desirable so to do, prohibit the sale of any tenure or portion thereof.

On behalf of the judgment debtor it has been contended that the effect of an order of exemption of a portion of a tenure by the Commissioner is to make it impossible for the decree-holder to execute the decree as a decree for rent under the Bengal Rent Recovery Act, 1865. It is plain that the effect of an order of exemption of a part of the tenure is not to deprive the decree-holder entirely of his right to execute the decree; for, if that had been the consequence, the effect would have been the same as if the entire tenure had been exempted from sale. We take it, therefore, that, notwithstanding the order for partial exemption, it is open to the decree-holder to execute his decree. The real question in controversy is, whether, on an order for partial exemption, the decree is to be executed as a decree for money or as a decree for rent. On behalf of the appellant, it has

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been argued that the order for exemption can be made in respect of a part of the tenure, only where the decree-holder seeks to execute a decree for rent of a fraction of a tenure, and in support of this view reference has been made to the case of *Dwarkanath Chuckerbutty v. Dhun Monce Chowdhraïn* (1). That case, in our opinion, has no application; it merely shows that when a share of a tenure has been treated as an independent and self-contained tenancy, in an execution of a decree for rent due in respect thereof, the property may be sold as if it were an entire tenure. But it is plain that the provisions of section 123 cannot be restricted in the manner suggested, because, if that was the only case where an order for partial exemption could be made, that would really be a case for application for sale of what constituted an entire tenure; and the prohibition would in substance be of the sale of such a tenure. Section 123 plainly covers a case of the description now before us, when an application is made for the sale of all the villages comprised in a tenure, but the Commissioner, for reasons sufficient in his opinion, directs the exemption of some of the villages from the sale. In such a case, it is plain that the sale of the unexempted portion is still to take place under the Bengal Rent Recovery Act of 1865; in other words, the restrictions in the proviso do not affect the provisions in the substantive part of the section for the sale of the property. Reliance, however, has been placed upon sections 4 and 16 of the Bengal Rent Recovery Act, 1865, to show that the legislature contemplated that sales under that Act should be sales of entire tenures; it may also be conceded as laid down by the Full Bench in *Sham Chand Mitter v. Juggut Chundra Sircar* (2) that ordinarily when a sale takes place of an entire tenure

(1) (1871) 15 W. R. 524.

(2) (1874) 22 W. R. 541.

under the Bengal Rent Recovery Act, 1865, the purchaser acquires the property free of all encumbrances. But there is, in our opinion, no inconsistency between the proviso to section 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, and the provisions of the Bengal Rent Recovery Act, 1865. It was competent to the legislature to lay down that a sale under section 123 would be a sale under the Bengal Rent Recovery Act of 1865, notwithstanding the fact that what was sold was not the entire tenure, but only the unexempted portion thereof. This, we think, is the result of the legislative provisions on the subject. If the contrary view were maintained, the result would be that by an order of exemption the landlord decreeholder would be practically deprived of his security for the rent. If the sale of the unexempted portion was merely the sale of the right, title, and interest of the judgment-debtor, the property might not be saleable at all, and a purchaser might not be found willing to bid a sufficient sum for the satisfaction of the judgment debt. The legislature could not have intended that, because, as in the case before us, an order of exemption is made for the benefit of persons whose title has been created by the defendant under circumstances which could not be controlled by the landlord, the landlord practically loses his security for the arrears of rent due to him. We hold, accordingly, that the effect of a sale of the unexempted portion is to pass the property to the purchaser free of all incumbrances. When the purchaser has obtained the property, what his precise position will be, that is, whether he will be, jointly with the holder of the exempted portion of the property, liable for the whole rent, is a matter which does not require consideration at this stage. It is conceivable that the purchaser may, with good reason, contend that, as the landlord, though under

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compulsion, has brought to sale some only of the villages included in the tenure, he is bound to apportion the rent; the consequence of such a sale, if the view suggested is well-founded, may be that the tenure is ultimately split up into two distinct tenures. These, however, are matters which must be left open for consideration, if and when the contingency arises. It is sufficient for us to hold now that the entire decree may be executed as a decree for rent against the unexempted portion of the tenure, and that the auction purchaser will acquire the status of a purchaser under section 16 of the Bengal Rent Recovery Act, 1865. The view put forward by the judgment debtor appellant, therefore, can not be accepted.

A minor question has been raised in the appeal, and requires only a brief consideration. It has been suggested that the sale proclamation was not properly drawn up, and that it was not competent to the decree-holder to set out in the sale proclamation the amount of rent that might be legitimately levied from the villages sought to be sold, and the villages exempted, respectively. Reference has been made in this connection to section 5 of the Bengal Rent Recovery Act, 1865. That section provides that the notice of sale "shall specify, in the words used in the plaint in the suit in which the decree was made, the name of the village, estate and pergunnah or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree." It is clear that in the case before us the decree-holder was not bound to apportion the rent that might be leviable from the exempted and unexempted villages, respectively. He would have strictly complied with the provisions of section 5, if, in the words of the section, he had stated the yearly



rent payable in respect of the entire tenure, together with a note that the villages named were exempted from sale under the order of the Commissioner. The judgment-debtor, therefore, cannot reasonably complain of what has been done by the decree-holder. At any rate, as a new sale proclamation is to be issued, we direct that it be drawn up in strict conformity with section 5 of the Bengal Rent Recovery Act, 1865. The rent will not be apportioned; the rent payable annually in respect of the whole tenure will be stated, together with a note that certain specified villages were exempted from sale.

The result is that this appeal fails, and is dismissed with costs.

O. M.

*Appeal dismissed.*

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## CRIMINAL REVISION.

*Before Cox and N. R. Chatterjee JJ.*

AZIZ SHEIKH

v.

EMPEROR.\*

1913  
 March 11.

*Appeal—Concurrent sentences of imprisonment not individually appealable—Aggregate of sentences—Right of appeal—Criminal Procedure Code (Act V of 1898), ss. 35 (3) and 413.*

An accused sentenced to concurrent terms of imprisonment, not one of which is individually appealable, has no right of appeal. Concurrent sentences cannot, for the purposes of appeal, be taken collectively.

*Suknandan Singh v. King-Emperor* (1) approved.

*Abdul Khalek v. King-Emperor* (2) not followed.

\* Criminal Revision, No. 11 of 1913, against the order passed by B. C. Mitter, Sessions Judge of Birbhum, dated Dec. 4, 1912.

(1) (1912) 17 C. L. J. 392.

(2) (1912) 17 C. W. N. 72.