

(1924) 02 CAL CK 0007**Calcutta High Court****Case No:** None

Mathurapore Zamindary Co. Ltd.

APPELLANT

Vs

Bhasaram Mandal

RESPONDENT

Date of Decision: Feb. 14, 1924**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 148
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 16

Citation: (1924) ILR (Cal) 703**Hon'ble Judges:** Walmsley, J; Mukerji, J**Bench:** Division Bench**Judgement**

Mukerji, J.

The facts which have given rise to this appeal are quite simple.

2. On the 4th February, 1920, Mr. G. Hennessey and others obtained a decree for rent against the respondents. The appellants, the Mathurapore Zamindary Co., Ltd., on the 17th July, 1920, applied for execution of the said decree, after being substituted in the place of the decree-holders on the basis of certain assignments in respect of the decree-holders' properties alleged to have been made in the first instance in September, 1919 and, thereafter in January, 1920. The learned Munsif, in whose Court the said application was made, issued notice on the judgment-debtors to show cause why the substitution should not be made. The judgment-debtors appeared, denied that there was any assignment of the decree in question and challenged the locus standi of the appellants to get themselves substituted or proceed with the execution. The learned Munsif held that the appellants were not transferees of the decree, either by assignment in writing or by operation of law and therefore they were not competent to apply for execution and consequently dismissed the application for execution. On appeal being taken from the said order, the order was affirmed and hence the present appeal to this Court.

3. It was contended on behalf of the appellants that, by reason of the provisions of Section 148 of the Bengal Tenancy Act, a mere assignment of the decree would not have enabled them to execute the same as a rent decree and inasmuch as they are assignees of the decree-holders" properties in respect of which the rent decree was passed, they were in a better position than mere assignees of the decree, that though there was no assignment of the decree in writing, there was one by operation of law, inasmuch as the assignment of the properties had been made together with all arrears of rent and on principles of equity it should have been held that they were transferees of the decree by assignment. Reliance was placed on their behalf upon the case of *Ananda Mohon Roy v. Promotha Nath Ganguli* (1920) 26 C.W.N. 863. It is unnecessary to refer to the other cases cited, as they do not appear to bear upon the aforesaid contention.

4. On the other hand, it was contended on behalf of the respondents that no consideration of equity could arise between an assignor and an assignee, such as might arise between a mortgagor and a mortgagee, as was the case in *Ananda Mohon Roy v. Promotha Nath Ganguli* (1920) 26 C.W.N. 863. Reference was made on their behalf to the case of *Thakuri Gope v. Malik Mokhtar Ahmad* (1922) C.W.N. Pat. 256 in support of the contention that the transferee under such circumstances could not come in to execute the decree.

5. At the outset, I may observe that the deeds of assignment upon which the appellants rely have not been placed before us, nor are they to be found on the record, and the only indication of their contents that can be gathered is from the judgment of the Munsif, where he says that "It is contended that the property of the decree-holders with all balances and sums of money due and owing by the raiyats and uncollected and unpaid on the day of assignment "had been transferred." The relevant provision of the Code is Order XXI, Rule 16. It is not pretended in the present case that there was any assignment of the decree in writing and it is well settled that if it is to be a valid assignment within the meaning of this rule and one not by operation of law it must be in writing and a transferee under an oral assignment has no locus standi: *Parvata v. Digambar I.L.R* (1890) . 15 Bom. 307. The Judicial Committee in the case of *Jalindra Nath Basu v. Peyer Deye Debi ILR* (1916) Cal 990; L.R. 43 IndAp 108 has observed that "such a transfer of the decree could by reason of Section 232 of the Code of Civil Procedure, 1882 (which, with certain modification which need not be referred to for our present purposes, corresponds to Order XXI, Rule 16, of the present Code), be effected only by an assignment in writing."

6. The contention that there was an assignment by operation of law is mainly based upon the observations of this Court in the case of *Ananda Mohon Roy v. Promotha Nath Ganguli* (1920) 25 C.W.N. 863. Transferees by operation of law ordinarily would be legal representatives of the deceased decree-holder, or the Official Assignee in the case of an insolvent-debtor, or the purchaser of a decree at a Court sale, or a

minor succeeding to the estate which was in the hands of an executor and other instances where there is a vesting of the interest by operation of statute. It is necessary, therefore, to analyse the aforesaid decision very carefully in order to see whether it really professes to extend the meaning of that expression. The facts in that case were as follows: Certain properties together with all rents, issues and profits arising therefrom or appertaining thereto were mortgaged, the mortgagee obtained a decree on the mortgage on the Original Side of this Court, and in execution of the decree the properties hypothecated, together with all arrears of rent, were sold and were conveyed by the Registrar to the appellants in the appeal on a certain date. On that day, certain rent suits, which the mortgagors had instituted previously for back rents in respect of some jamas held under the properties hypothecated, were decided and decrees for rent passed in favour of the mortgagors. The appellants in the appeal applied for execution of the rent decrees and the question arose whether they could do so as there was no assignment of the decrees in writing or by operation of law. The learned Judges in the course of their judgment commented on and distinguished the cases of *Ram Sahai v. Gaya* I.L.R (1884) All. 107 and *Dost Muhammad v. Altaf Husain Khan* (1912) 17 Ind. Cas. 512 as being inapplicable, as the facts therein were different from those in the case they were dealing with. No doubt in the judgment of this Court in that case the observations of Sargent C.J. in the case of *Purmananddas Jiwandas v. Vallabdas Wallji* I.L.R.(1887) 11 Bom. 506 were quoted at length, but the decision of this Court, as I read it, did not turn upon the meaning of the expression "by operation of law". This Court held that "In the present case there was no assignment of the decree for arrears of rent in so many words, but not only the properties under which the jamas in arrears were included, but also all arrears of rents which were the subject of the rent-suits were assigned to the appellants. The arrears of rent were none the less arrears though suits had been brought for them, and decrees were passed for them on the very day the conveyance was executed and we think that in these circumstances the appellants may be treated as the Original Side of this Court, and in execution of the decree the properties hypothecated, together with all arrears of rent, were sold and were conveyed by the Registrar to the appellants in the appeal on a certain date. On that day, certain rent suits, which the mortgagors had instituted previously for back rents in respect of some jamas held under the properties hypothecated, were decided and decrees for rent passed in favour of the mortgagors. The appellants in the appeal applied for execution of the rent decrees and the question arose whether they could do so as there was no assignment of the decrees in writing or by operation of law. The learned Judges in the course of their judgment commented on and distinguished the cases of *Ram Sahai v. Gaya* I.L.R (1884) All. 107 and *Dost Muhammad v. Altaf Husain Khan* (1912) 17 Ind. Cas. 512 as being inapplicable, as the facts therein were different from those in the case they were dealing with. No doubt in the judgment of this Court in that case the observations of Sargent C.J. in the case of *Purmananddas Jiwandas v. Vallabdas Wallji* (1887) ILR 11 Bom. 506 were quoted at length, but the decision of this Court,

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Lordships, in the first place that, assuming Wajed to have the interest asserted, the decree was not, in the terms of this section, transferred to him either by assignment, which is not pretended, or by operation of law, from the original decree-holder. No incident had occurred on which the law could operate to transfer any estate from his mother to him. There had been no death; there had been no devolution; there had been no succession. His mother retained what right she had; that right was not transferred to him; if he had a right, it was derived from his father; it appears to their Lordships, therefore, that he is not a transferee of a decree within the terms of this section. Their Lordships have further to observe, that they agree with the Chief Justice in the view which he expressed,--that this was not a section intended to apply to cases where a serious contest arose with respect to the rights of persons to an equitable interest in a decree. It was not intended to enable them to try an important question such as the legitimacy or illegitimacy of an heir. They are further fortified in this view by the consideration that, u/s 364 of this Act, no appeal would lie from any judgment or decision given in a proceeding u/s 208; it appears difficult to suppose that such an important question as this should be triable without appeal. Therefore, in their Lordships' view, agreeing with that of the Chief Justice, Section 208 does not apply. Even if it did apply, it would appear to their Lordships that, inasmuch as proceedings under it are not subject to appeal, probably a suit would lie for the purpose of reversing an order made in pursuance of it."

7. In my opinion the fact that, under the present law, there is an appeal does not take away from the weight that should attach to the above observations. In the case before us the outstanding features are that there was no assignment of the decree in fact in writing, that no question of equity arises inasmuch as it was a simple transaction between an assignor and an assignee and that the decree was not in fact in existence on the date of the assignment but came into being long after that date. Under such circumstances can the assignee come in? There was no doubt an assignment of the properties, and I may assume with all its back or future rents, but that is essentially different from the transfer of the decree itself. See the observations of Mahmood J. in *Ram Sahai v. Gaya* ILR (1884) All. 107, and *Hansraj Pal v. Nukhraji Kunwar* (1907) All. W.N. 280. A person to whom a party agrees to transfer a decree that may be passed in a suit is not a transferee within the meaning of the rule: *Basroorvittil Bhandari v. Ramchandra Kamthi* (1906) 17 M.P. L.J. 391. A transfer of the property during the pendency of the suit does not entitle the purchaser to apply for the execution of the decree, unless he has taken steps to have his name substituted in the suit in the place of his vendor, and Order XXI, Rule 16, Civil Procedure Code, does not apply to such a case; *Dost Muhammad v. Altaf Husain Khan* (1912) 17 Ind. Cas 512, *Peer Mahomed Rowthen v. Raruthan Ambalam* (1914) 30 Ind. Cas. 831, *Thakuri Gope v. Malik Mokhtar Ahmad* (1922) C.W.N. Pat. 256. There having been no transfer by assignment in writing, the appellants could not by any application to the Court have kept the decree alive. See the observations of the

Judicial Committee in the case of Jatindra Nath Basu v. Peyer Deye Debi ILR (1916) Cal 990; L.R. 43 IndAp 108. The appellants" contention based on the provisions of Section 148 of the Bengal Tenancy Act does not really assist them for, if at all, those provisions impose on the transferee of a rent decree a further disability, which must be removed before he can apply for executing the decree as a rent decree.

8. The appellants" contentions, therefore, fail, the orders passed by the Courts below are correct and the appeal must be dismissed with costs.

Walmsley, J.

9. I agree.