

(1881) 03 CAL CK 0034

Calcutta High Court

Case No: None

Rashbehary
Mookhopadhya and
Another

APPELLANT

Vs

Maharani
Surnomoyee

RESPONDENT

Date of Decision: March 13, 1881

Citation: (1881) ILR (Cal) 403

Hon'ble Judges: Pontifex, J; Field, J

Bench: Division Bench

Judgement

Pontifex, J.

In this case certain Chowdhries held a taluq under Maharani Surnomoyee; and by an ekrar they hypothecated certain other property belonging to them as security for the rent of the taluq. The Maharani instituted a suit against them for the rents of the taluq from Kartick to Cheyt 1281, amounting to about Rs. 9,000, and obtained a decree. Under the ekrar, the property hypothecated by them would be liable, no doubt, to satisfy that decree; but subsequently to the execution of the ekrar, and prior to any attachment by the Maharani under her rent-decree, the Chowdhries assigned all their interest in eight annas of the property hypothecated to Rashbehary Mookerjee and another; and with respect to the other eight annas made a mourosi lease thereof to the same persons. Subsequently the Maharani, under Reg. VIII of 1819, obtained an order for summary sale for the rents from Srabun to Cheyt 1283, and the property was sold; but it is alleged by the applicant before us that such sale was invalid, inasmuch as the taluq was purchased by the taluqdars themselves. For the purposes of this judgment it is not necessary for us to decide any question as to that, as in consequence of a preliminary objection by the respondent, we are unable to go into the merits of the case. In execution of her rent-decree, Maharani Surnomoyee subsequently attempted to bring to sale the property that had been hypothecated by the Chowdhries to her under the ekrar. In

such execution-proceedings, Rashbehary Mookerjee and his co-proprietor appeared as objectors, and alleging that there had been a subsequent assignment of the Chowdhries' interests to them, disputed the right of the Maharani to sell this property in execution of her rent-decree. This objection was properly allowed; whereupon the Maharani instituted a regular suit against Rashbehary Mookerjee and his co-proprietor and by the decree in that suit it was declared, that the Maharani had a right to bring the property contained in the ekrar to sale for the purpose of realizing her rent-decree; but that, as a condition precedent, she was bound, first of all, to sell the taluq itself for the purpose of satisfying her rent-decree. Subsequently to that decree and to the summary sale, the Maharani has again attempted to execute her rent-decree by attaching and bringing to sale the property comprised in the ekrar, and Rashbehari Mookerjee and his co-proprietor have again intervened as objectors in the execution proceedings. It has been decided by the Subordinate Judge upon the evidence that the Maharani notwithstanding the objection of Rashbehary Mookerjee and his co-proprietor is entitled to proceed to sell all the properties comprised in the ekrar. Rashbehari Mookerjee and his co-proprietor, being dissatisfied with that order, have appealed to us; but a preliminary objection has been taken on the part of the Maharani that the appellants have no right of appeal to this Court, inasmuch as being merely objectors, they are barred by Sections 278 and 283 of the Procedure Code from appealing to this Court. We are referred by the appellants' vakeel to Section 244, Clause (c) in support of their right of appeal. In that clause it is enacted that any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree," shall be determined by order of the Court executing the decree; and it is urged on behalf of the appellants, that they are representatives of the Chowdhries within the meaning of that clause. Now, we think, that though the word representatives in that clause may include subsequent representatives in point of interest, and is not confined only to heirs or executors, yet, inasmuch as Rashbehary Mookerjee and his co-proprietor had become assignees of the taluqdars before the rent-suit was instituted by the Maharani, they cannot, within the terms of that clause, be considered as representatives of the taluqdars. Their interest, in fact, came into existence before the suit against the taluqdars, and they can, therefore, scarcely be considered in that suit as representatives of the taluqdars, the judgment-debtors. We think, therefore, that the preliminary objection that has been taken by the Maharani must prevail, that Rashbehary Mookerjee and his co-proprietor are not entitled to appeal on the merits to this Court; and we are, therefore, unable to go into the merits, and decide between the parties whether the Maharani is now entitled to proceed against the property, which was hypothecated to her by the ekrar, in order to realize the amount of decree in the rent-suit.