

Kirtarth Gir Vs. Mathura Prasad Ram and ors.

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Court : Allahabad

Decided On : Jul-01-1924

Reported in : (1924)ILR46All924

Judge : Mukerji and ;Dalal, JJ.

Appellant : Kirtarth Gir

Respondent : Mathura Prasad Ram and ors.

Judgement :

Mukerji and Dalal, JJ.

1. The judgment-debtor in this case is a permanent lessee or thekadar paying a certain rent to the zamindar. In the execution department in execution of a decree passed against him the learned Subordinate Judge has. appointed a receiver to collect rents recoverable by the thekadar from occupancy and non-occupancy tenants. He has come here in appeal in consequence. It was argued on his behalf that he was in the position of a non-occupancy tenant and his interest in the holding cannot be transferred except by way of lease of one year.

2. It was contended that the order of the lower court amounted to a transfer of the interest of a thekadar and was, therefore, invalid under the provisions of Section 20(3) of the Agra Tenancy Act. Reference was also made to Order XL, Rule 1, for the appointment of a receiver where a court is given power to order the removal of any person from the possession or custody of the property. The inference sought to be drawn was that the property has been removed from the possession and custody of this thekadar and the receiver is appointed to be in possession and custody of the property. We do not take this view of the appointment of a receiver. Order XL does not specifically refer to execution proceedings. When in execution proceedings a receiver is appointed, we take it that, he is put in the position of the judgment-debtor and there is no transfer of the property from the judgment-debtor to him. The arrears of rent which have once accrued are admittedly liable to attachment and recovery in satisfaction of a debt. All that the court has done is to appoint a person who shall, whenever rents have accrued recover them and utilize them on behalf of the judgment-debtor in payment of the decree. There is no transfer of the interest of a thekadar. Taking this view we do not think that there is any prohibition contained in the Tenancy Act against the order of the lower court.

3. We dismiss this appeal with costs.