

(1879) 11 AHC CK 0001

Allahabad High Court

Case No: None

Umrao Begam

APPELLANT

Vs

The Land Mortgage
Bank of India

RESPONDENT

Date of Decision: Nov. 18, 1879

Citation: (1880) ILR (All) 451

Hon'ble Judges: Robert Stuart, C.J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

This is a reference to the Full Bench of the Court by a Division Bench (Pearson, J., and Oldfield, J.) to whom an application for a review of judgment had been presented. The Division Bench had held that Section 9 of the Rent Act XVIII of 1873 did not prevent a zamindar, who was the holder of a decree against a tenant with a right of occupancy, from attaching and selling in execution of his decree his judgment-debtor's occupancy-right. In the course of the hearing before the Division Bench, a Full Bench ruling of this Court in the case of Ablakh Rai v. Udit Narain Bai ILR All 353 was referred to. In that Full Bench case it was held by a majority that the right of an occupancy-tenant was only transferable by sale in execution of a decree, where the decree-holder was a co-sharer by inheritance in such right. I agreed with the majority so far, but I went further and held, and still hold, that the right to enforce legal process by execution of any decree against such property quantum valeat cannot under any circumstances be taken away unless by express words to that effect, and I referred to Section 171 of the Rent Act to which the attention of the Full Bench had been directed as strengthening my view of the meaning and application of Section 9. Under these circumstances, I could not dissent from the judgment of the Division Bench in the present case, for, in my opinion, Section 9 read in connection with s. 171 allows the transfer of property by the execution of a

decree against the tenant in the hands of any decree-holder. Nor in so expounding the law do I consider that I am legislating by arbitrarily adding to its body. On the contrary I am simply giving effect to the rights of suitors with decrees in their hands against such a class of judgment-debtors, and which decrees in my view can be executed against any property or right and interest in property which his debtor may have, and for what it may be worth. I would, therefore, refuse the present application for a review on the grounds assigned and affirm the ruling of the Division Bench.

2. I may here observe that the report of my judgment in that Full Bench case is not quite correct in one particular. I am there made to say that "I consider that the words "or otherwise" must be understood to be a general expression controlling the particular words which go before," should have been "controlled by the particular words which go before."

Pearson, J.

3. It is intelligible that it was the intention of Section 9, Act XVIII of 1873, to empower occupancy-tenants to transfer their rights to co-sharers by inheritance in such rights without the consent of the land-owner. But it is difficult to understand that it was intended to prohibit absolutely a transfer of such rights by such tenants to any person to whom the land-owner was willing that such transfer should be made. A land-owner can oust a defaulting tenant in execution of a decree for arrears of rent and make over the holding to another person. Why should not a transfer of the holding be arranged and effected between the defaulter and another person with the land-owner's consent? In such a transaction there appears no moral turpitude or political evil such as to warrant the Legislature in forbidding and repudiating it as essentially bad and declaring it to be null and void in law. On the contrary, such a transaction appears to be of an innocent, unobjectionable and convenient nature, and incapable of harming anybody. It seems also, as the judgment which it is sought to review observed, unreasonable to hold that a landowner should not be at liberty to cause the sale in execution of his own decree of the occupancy-right of his own judgment-debtor in land belonging to himself, if he be willing to accept the auction-purchaser as a tenant. Although the terms of Section 9 are not qualified by any reference to the consent of the landowner, we are yet bound to construe them in such a reasonable manner as to avoid absurd conclusions. I, therefore, adhere to the view expressed in the judgment of the 2nd January 1878.

Spankie, J.

4. We must, I think, accept the strict terms of Section 9 of the Rent Act. The rights of tenants at fixed rates are heritable and transferable. But no other right of occupancy shall be transferable by grant, will or otherwise, except as between persons who have become by inheritance co-sharers in such right. It seems to me that to allow sales, provided that the landlord consents to them, would be law-making on the part

of this Court. "We should practically add to the section a proviso which the framers of the law and the Legislature might have introduced, when the Act was passed, had they been so minded. I would, therefore, say that s. 9 bars a sale made with the consent of the zamindar, which, without reference to his consent, is prohibited by the terms of the section, except as between persons who have become by inheritance co-sharers in the right, the subject of the sale.

Oldfield, J.

5. The question raised in this case is whether the sale in execution of a decree of a Civil Court of the rights and interests of a tenant having rights of occupancy made at the instance of his landlord, who has obtained a decree against him, is valid so as to convey any rights or interest to the purchaser. Section 9 of Act XVIII of 1873 is relied on to show that such a sale is invalid. That section is as follows:--"The rights of tenants at fixed rates shall be heritable and transferable: no other right of occupancy shall be transferable by grant, will or otherwise except as between persons who have become by inheritance co-sharers in such right." If this section is to be taken to mean that a landlord may not bring to sale his tenant's rights in his holding in execution of a decree of a Civil Court obtained against him, it can only be by interpreting this section as absolutely and without qualification forbidding and rendering void all transfers outside the limitation prescribed under whatever circumstances they have been made, whether with the consent of the landlord, the tenant, or of both, and if so, such a transfer will necessarily be void although made with the consent of both landlord and tenant. It seems to me impossible to suppose that this was the intention of the law. The object of this section was, I apprehend, to define the extent of a tenant's interest in his holding as opposed to the landlord's, and to settle what had been a vexed question, how far a tenant has the power, without the consent of his landlord, to transfer his holding. The section refers to transfers made by the tenant independently of the landlord, and it was not intended to disallow transfers when made with the consent of the landlord, or at his instance, as in the case before us, in execution of a decree of the Civil Court, when there is otherwise nothing in the law forbidding a tenant's rights to be sold in execution of such a decree. It will be seen that the effect of Section 9, Act XVIII of 1873, is to give a larger property in their holdings to tenants at fixed rates than it gives to the tenants with rights of occupancy, and a larger property to the latter than it gives to mere tenants-at-will. The first class can transfer their holdings at their own pleasure, and the second class can only do so under limitations. This distinction between the different powers of transfer in different classes of tenants is intelligible only when we ascribe it to the desire to protect the landlord against transfers at the will and pleasure of his tenants. It is certain that the Bent Act does not extend to the tenants any absolute right to be maintained in their holdings against their landlords. Tenants with rights of occupancy are not protected against being ejected from their holdings by their landlords in execution of decrees for arrears of rent obtained against them by their landlords, and it would appear that the landlord might, if so

disposed, bring to sale his tenant's interest in his holding in execution of a decree for rent, u/s 171 and following sections of Act XVIII of 1873. I see no reason to suppose that it was the intention of Section 9, Act XVIII of 1873, to invalidate the sale in the case before us.