
(1925) 07 PAT CK 0008

Patna High Court

Case No: None

Rameshwar Singh
Bahadur

APPELLANT

Vs

Puran Chandra
Mansali

RESPONDENT

Date of Decision: July 13, 1925

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 148(a), 158B
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 58

Citation: AIR 1926 Patna 213

Hon'ble Judges: Sen, J

Bench: Division Bench

Judgement

Sen, J.

The petitioner instituted a rent suit u/s 148(a), Ben. Ten. Act, against Mewa Lal Kamath who was recorded in the petitioner's serishta for arrears of rent for the years 1326 to 1329 making the Babus of Madhubani, the cosharer landlords, parties to the suit. On 22nd February 1923 he obtained a decree. He thereafter took out execution complying with the provisions of Section 158-B, Ben. Ten. Act, and serving notices on the cosharer landlords. The sale proclamation and notices were issued simultaneously. On 13th January 1925 the opposite party preferred a claim under C. 21, Rule 58 of the Code of Civil Procedure; they alleged that they had purchased the holding at an auction sale in execution of a rent decree for the years 1324 to 1327 obtained by the Madhubani Babus against the same tenant and obtained possession thereof by virtue of the dakhaldehani given to them on the 24th December 1924. It appears, however, that when the decree was obtained by the petitioner, the sale to the claimants had not taken place. The decree in favour of the Madhubani Babus was executed on the 15th February 1923 and the sale in favour of the claimants took place on the 18th July 1923; that is, about five months after the decree in favour of the petitioner. The learned Munsif held that at the date when

the petitioner obtained his rent decree, there was no tenure of Mewa Lal in existence, it having already passed to the claimants. This view appears to be wrong; for under the provisions of Section 158-B of the Bengal Tenancy Act the tenure passes to the purchaser when it is sold in execution of rent decree. Until the sale took place the tenant, who was recorded in his serishta must be deemed to have been the person in whom the tenure was vested. The petitioner, therefore, was quite competent to bring a suit, as he did under the provisions of Section 148-A of the Bengal Tenancy Act and to execute his decree under the provisions of Section 158-B of the Bengal Tenancy Act.

2. The point that arises is whether in the events that happened and in view of the provisions of Section 170 of the Bengal Tenancy Act the opposite party are entitled to put in any claim under Order 21, Rule 58 of the Code of Civil Procedure. The learned Munsif entertained and allowed the claim holding that inasmuch as there was no tenure in existence at the date of the petitioner's decree, the provisions of Section 170 would constitute no bar to a claim being put forward. This view appears to be unsound. The provisions of Section 170 are clearly imperative and they lay down that the provisions of the CPC as to claim cases shall not apply to a tenure or holding attached in execution of a decree for arrears of rent thereof. This view is supported by many rulings amongst others by an unreported ruling: vide judgment of Jwala Prasad, Ag. C.J. in Civil Revision No. 185 of 1924, [Rameshwar Singh Bahadur Vs. Mt. Rajo Chowdhraim](#), which likewise lays down the principle that "a landlord is not bound to go beyond his own record in order to enforce his claim for arrears of rent and any person not recorded as a tenant must seek his remedy elsewhere and cannot be permitted to stand in the way of the landlord selling the holding for the realization of the decree obtained against his recorded tenant."

3. I, therefore, think that the Court below was not competent, in view of the provisions of Section 170 of the Bengal Tenancy Act, to entertain the claim in regard to the subject-matter of execution.

4. The application is allowed; the order of the Munsif is set aside. The execution may now proceed.