

(1922) 02 CAL CK 0002**Calcutta High Court****Case No:** S.A. No. 2621 of 1919

Sutu Bibi

APPELLANT

Vs

Jamini Sundari Guha

RESPONDENT

Date of Decision: Feb. 23, 1922**Final Decision:** Dismissed**Judgement**

1. The plaintiff respondent has contained a decree for the ejectment of the appellants-defendants 1 and 2 from a piece of land which is the northern $\frac{1}{4}$ th of the Settlement Dags 262, 279 and 303. These dags and other (sic) appertain to a raiyati holding which (sic) belonged to defendants 3 to 5 and one Kamiruddin is the father of defendants 6 and 7. The suit was brought for the arrears of rent of this holding but Kamiruddin was not made a party to this suit. Consequently when the holding was sold in execution of the decree, then obtained, the plaintiff who purchased it only acquired the right, title and interest of the judgment-debtors which amounted to 12 annas share of the holding. The principal defendants are the sons of one Taher who held the land in dispute as an under-raiyat under the defendant No. 4.

2. It has been found that by his purchase of the interest of defendant No. 4 at the auction sale since Taher's under raiyati interest was not heritable the plaintiff has the right to eject the appellants. On the findings arrived at we hold that this decision is correct, it is found that these specific lands which are the subject of this suit were held by Taher under defendant No. 4 alone and the other co-sharers of defendant No. 4 had no interest in those specific lands. On these findings the plaintiffs as purchasers of the interest of defendant No. 4 in the holding had the right to sue for khas possession of these lands and to eject trespassers from them on the termination of Taher's tenancy.

3. The defendants Nos. 6 and 7 who are the owners of the remaining share of the holding have been made parties to the suit and did not appear to contest. It is urged that the defendants in their claim alleged possession of all the lands in the holding except this $\frac{1}{4}$ th of these plots and consequently being in possession of 12 annas

share which he has purchased he cannot sue in ejectment to recover possession of the 4 annas. This is a question which might arise between the plaintiff and the defendants Nos. 6 and 7 but it is of no assistance to the appellant-defendant.

4. So far as this particular plot is concerned the plaintiff has succeeded, to the rights of defendant No. 4 including the right, by arrangement with, the co-sharers, to sole possession of these lands on the termination of the tenancy granted by defendant No. 4.

5. Another point taken is that the defendants have set up title under defendants Nos. 6 and 7 in respect of other portions of these plots, We cannot see how this plea, raised by the defendants but which has not been decided by the lower Appellate Court, can in any way affect the case.

6. The only other point urged is that the lower Appellate Court was wrong in holding that the interest of an under raiyat is not heritable. It is conceded that there are several decisions of this Court supporting that view. But it is urged that they are wrongly based on the Full Bench decision in Arif Mondal v. Ram Ratan Mondal (1904) 31 Cal. 757 = 8 C.W.N. 479; (F.B.) since in that case the Full Bench did not definitely decide that the interest of an under raiyat was not heritable. It is true that that point was not expressly decided by the Full Bench, but ever since that decision it has been repeatedly so held by Division Benches of this Court, and we are not prepared to disturb this long current of decision by a reference to a Full Bench.

7. The appeal fails and is dismissed with costs.