

(1924) 04 CAL CK 0003**Calcutta High Court****Case No:** None

Boroda Prosad Roy Choudhri

APPELLANT

Vs

Fojuddi Halder and Others

RESPONDENT

Date of Decision: April 1, 1924**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 170(3)

Citation: 83 Ind. Cas. 384**Hon'ble Judges:** Newbould, J; B.B. Ghose, J**Bench:** Division Bench**Judgement**

1. These three Rules were obtained by the landlord who has obtained decrees for rent and put them into execution. Applications were made by purchasers of portions of the holdings for deposit of the decretal amount under section. 170 (3) of the Bengal Tenancy Act. The decree-holder objected that the applicants had no right to make the deposit under the provisions of that section. The learned Munsif overruled the objection of the decree-holder and directed that the applicants were entitled to make the deposit under the law.

2. It is contended on behalf of the petitioner that the interest of the applicants in the holdings is not voidable on the sale and, therefore, they were not entitled to make the deposit. It is not denied before us that the applicants have an interest in the holdings which are sought to be sold in execution of the rent-decree. But the contention is that the interest of the applicants would pass by the sale and it is not such an interest as should be considered as "voidable on the sale." There has been some conflict of decisions in this Court on that point. The learned Munsif relied on the case of Tarak Das Pal v. Haris Chandra Banerjee 16 Ind. Cas. 977 : 17 C.W.N. 163 : 16 C.L.J. 548, and the case of Ahamadullah Chowdhury v. Hakaru Sahu 27 Ind. Cas. 176 : 20 C.W.N. 39 : 22 C.L.J. 106, in support of the pro-position, that these persons were entitled to make the deposit u/s 170 (3) of the Bengal Tenancy Act. The cases to the contrary which We need refer to are the case of Nalini Behary Ray v. Fulmani

Dasi 13 Ind. Cas. 487 : 16 C.W.N. 421 : 15 C.L.J 388, the case of Mahammad Ismail v. Satyesh Chandra Sarkar 26 C.W.N. (170) Short notes which appears in the short notes of Mahammad Ismail v. Satyesh Chandra Sarkar 26 C.W.N. clxx (170) Short notes and the case in which judgment was delivered by one of us reported as Kumar Narendra Nath Mitter v. Abdul Molla 27. C.W.N. clxxv (175) Short notes. In the case in Tarak Das Pal v. Haris Chandra Banerjee 16 Ind. Cas. 977 : 17 C.W.N. 163 : 16 C.L.J. 548 "on which the Counsel for the opposite party mainly relies it is stated that the interest of an unrecognised purchaser of a non-transferable holding is an interest which is voidable on the sale. The contention that was raised on behalf of the landlord in that case is mentioned at page 165 of the Report "and it was that the interest is extinguished on the sale and cannot, therefore, be described as voidable on the sale. This contention was overruled as it was held that the contrary proposition had been laid down in some of the cases mentioned in the judgment. It would, however, appear on examination of the cases cited that this point has not been considered in any of the cases in the" view that has been presented before us. The position is this, after the transferee has been recognised by the landlord a decree obtained against the transferor would not bind the transferee and, therefore, the interest of the transferee would not be affected "by the sale Such a transferee would not, therefore, necessarily come within the provisions of Section 170 (3) of the Bengal Tenancy Act. Where the transferee of a non-transferable holding has not been recognised by the landlord a decree obtained against the tenant transferor would be binding on the unrecognised transferee, and in execution of the decree the interest of the transferee would also pass along with the interest of the transferor and the auction-purchaser gets the interest of both the persons, the transferor and the transferee, who were interested in the holding. It can, therefore, hardly be said that the interest of the transferee is one which is voidable on the sale and, therefore, upon the terms of the section it would appear that such transferees are not entitled to make the deposit u/s 170 (3) of the Bengal Tenancy Act. It is unnecessary for us to express any opinion whether they would be entitled to make any deposit under the Rules laid down in Order XXI of the Code of Civil Procedure.

3. We are asked on behalf of the opposite party having regard to the conflict of decisions that this question should be referred to a Full Bench. But the view we now take has been taken generally in a number of cases and those cases being more recent than the case in Tarak Das Pal v. Haris Chandra Banerjee 16 Ind. Cas. 977 : 17 C.W.N. 163 : 16 C.L.J. 548 we do not think that it is necessary to make any reference to a Full Bench. Furthermore both of us agree with the reasoning in the decision of one of us reported as Kumar Narendra Nath Mitter v. Abdul Molla 27. C.W.N. (175) Short notes, mentioned above. The case in Ahamad ullah Chowdhury v. Hakaru Sahu 27 Ind. Cas. 176 : 20 C.W.N. 39 : 22 C.L.J. 106 merely follows the decision in Tarak Das Pal v. Haris Chandra Banerjee 26 C.W.N. clxx (170) Short notes.

4. The Rules are, therefore, made absolute and the order of the learned Munsif is set aside. Having regard to the circumstances of the case we make no order as to costs. The record will be sent down at once.