
(1912) 07 CAL CK 0003

Calcutta High Court

Case No: None

Tarak Das Pal
Chowdhry

APPELLANT

Vs

Harish Chandra
Banerjee

RESPONDENT

Date of Decision: July 19, 1912

Acts Referred:

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

Citation: 16 Ind. Cas. 977

Hon'ble Judges: Beachcroft, J; Ashutosh Mookerjee, J

Bench: Division Bench

Judgement

1. We are invited in this Rule to set aside an order made u/s 170, Sub-section (3), of the Bengal Tenancy Act. The petitioner obtained a decree for rent against Bhaba Sundari and in execution thereof advertised the holding for sale. Thereupon the present opposite party made an application u/s 170 of the Bengal Tenancy Act and asked for leave to deposit the requisite amount. In the petition he alleged that on the 25th January 1884, he had purchased the holding from Trilochan Banerjee, the husband of Bhaba Sundari Debi, and had since that date been in occupation of the holding. The application was opposed by the decree-holder. His objection has been overruled on the ground that the applicant is a judgment-debtor within the meaning of Clause (3) of Section 170. An appeal was preferred to the District Judge but rejected on the ground that the appeal was incompetent and the order could not be revised by him u/s 153 of the Bengal Tenancy Act. We are now asked to consider the legality of the view taken by the Court of first instance: in our opinion, that view cannot possibly be supported.

2. The judgment-debtor, mentioned in Clause (3) of Section 170, is a person against whom the decree under execution has been obtained: it does not include a person in the position of the applicant, although he is likely to be affected by the sale which may

ultimately be held in execution of the decree. The question, therefore, arises whether the applicant is a person having in the holding an interest voidable on the sale. It is manifest that if all the allegations of the applicant are well founded, he is not a person of this description. His case is that after his purchase from the husband of the judgment-debtor, he has not only been in occupation of the holding, but that his purchase has been recognised. Consequently, the decree against the registered tenant does not bind him and any sale in execution of such decree cannot possibly extinguish his interest. But the question arises, whether he is a person of the description mentioned in Sub-section 3 of Section 170, if he fails to prove that the holding was not transferable without the consent of the landlord or that his purchase has not been recognised by the landlord. Now, it has been pointed out to us that, according to the allegations of the applicant, he has been in occupation of the lands of the holding ever since the 25th January 1884. It has been argued with reference to this circumstance that as he has been in occupation of the holding for a period longer than 12 years, claiming, to the knowledge of the landlord, to be the tenant of the holding, he has acquired an interest in the holding within the meaning of Sub-section (3) of Section 170. We are of opinion that this contention is well founded. But it is not necessary for us to decide the wider question, namely, whether the applicant has, by such possession for a term longer than 12 years, acquired by adverse possession the status of a tenant as against the landlord. It is sufficient to hold that his possession claiming to be a tenant for a period longer than 12 years to the knowledge of the landlord confers on him the position of a person who has an interest in the holding within the meaning of Sub-section (3) of Section 170. The question which next arises for consideration is, whether such interest or the interest of the applicant, if the holding is transferable by custom, is voidable on the sale. It has been argued on behalf of the petitioner that the effect of the sale is to pass the holding to the purchaser free of such interest, as laid down by a Full Bench of this Court in the case of *Sham Chand Koondoo v. Brojonath Pal Chowdhury* 12 B.L.R. 484 : 21 W.R. 94 and by later decisions of this Court, amongst which may be mentioned *Rash Behary v. Peary Mohun* 4 C. 346 : 3 C.L.R. 116. It has been contended, not without some force, that this interest is extinguished upon the sale and cannot strictly be described as voidable on the sale. But the decisions in *Chundra Sahai v. Kali Prosonno* 23 C. 254 : *Radhika Nath Sarkar v. Rakhal Raj Gayen* 3 Ind. Cas. 835 : C.W.N. 1175 : 10 C.L.J. 473 and *Jugal Mohini Dasi v. Sri Nath Chatterjee* 7 Ind. Cas. 477 : 12 C.L.J. 609 in which the earlier decision in *Jotindra Mohan Tagore v. Lurga Dabe* 10 C.W.N. 438 was considered, show that the interest of the applicant is voidable on the sale. In this connection, it may be pointed out that the expression used by the Legislature is "interest voidable on the sale" and not "incumbrance voidable on the sale," under the provisions of the fourteenth Chapter of the Bengal Tenancy Act. The language used by the Legislature is comprehensive and should not be narrowly construed in view of the obvious object of this provision. Under these circumstances, we are of opinion that the Rule must be made absolute and the order of the Court below discharged, because based upon reasons which cannot possibly be supported. We direct the Court below to ascertain, in the first instance, whether the applicant has purchased the holding as alleged by him by the conveyance of the 25th

January 1881 and whether such purchase has been recognised by the superior landlord, if both these elements are found in his favour, the applicant is not entitled to make the deposit under Sub-section (3) of Section 170. If, however, it is established that his purchase has not been recognised by the landlord, he is entitled to make the deposit under that section, and it is not material for this purpose to consider whether he has acquired an interest in a transferable holding or whether he has acquired by possession for a period longer than 12 years the status of a tenant of a non-transferable holding.

3. The Rule will accordingly be made absolute, but there will be no order for costs.