(1919) 03 CAL CK 0005

Calcutta High Court

Case No: None

Bipin Chandra Barua	APPELLANT
Vs	
Jagat Chandra Nath	RESPONDENT

Date of Decision: March 20, 1919

Citation: AIR 1919 Cal 344 : 51 Ind. Cas. 962

Hon'ble Judges: Walmsley, J; Charles Chitty, J

Bench: Division Bench

Judgement

1. This is an appeal by the decree-holder arising out of execution proceedings. The question is whether the holding, which is found to be a non-transferable one, was saleable in execution of a money-decree where the landlord had given his consent to the sale but the tenant had objected. The point is covered by the decision of this Court in Narayani v. Nabin Chandra Chowdhari 36 Ind. Cas. 803 ; 21 C.W.N. 400 ; 26 C.L.J. 351 ; 44 C. 720 where it was distinctly laid down that an occupancy holding or any part of it could not be sold in execution of a decree for money obtained against the raiyat when the raiyat objected even if the landlords gave their consent to the sale. Their Lordships who decided that case were of opinion that their decision necessarily followed upon the Full Bench decision in Dayamoyi v. Ananda Mohan Roy Chowdhuri 27 Ind. Cas. 6l ; 18 C.W.N. 971 ; 42 C. 172 ; 20 C.L.J. 52 (F.B.). We find that the case first above cited has been followed in this Court in Ram Sundar Karmokar v. Lochan 38 Ind. Cas. 942 and also by the Patna High Court in Mac Pherson v. Debi Bhushan Lal 42 Ind. Cas. 36 ; 2 P.L.J. 530. The learned Pleader for the appellant cannot bring to our notice any case in which the decision in Narayani v. Nabin Chandra Chowdhari 36 Ind. Cas. 803 ; 21 C.W.N. 400 ; 26 C.L.J. 351 ; 44 C. 720 has been dissented from or even doubted. We are not prepared to dissent from it. The appeal must accordingly be dismissed with costs, hearing fee two good mohurs.