

(1925) 04 CAL CK 0004

Calcutta High Court

Case No: None

Ambika Charan Bhakta

APPELLANT

Vs

Ram Prosad Chatterjee and
Others

RESPONDENT

Date of Decision: April 6, 1925

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 100
- Limitation Act, 1963 - Article 11A

Citation: AIR 1926 Cal 377

Judgement

1. This case raises an interesting question which does not seem to have come up for consideration before. The facts are that the plaintiff respondents obtained a rent decree against the heirs of the tenant Gaganeswar Mondal and in execution of that decree purchased and took possession of the holding in suit. The defendants thereupon alleging dispossession made an application under Order 21, Rule 100, Civil P.C., for restoration of possession. On the 26th June 1917 order was passed in their favour under Order 21, Rule 101. The plaintiffs instituted the present suit in May 1920. It is accordingly maintained by the appellants that the suit is barred under Article 11-A of the Limitation Act, having been brought "more than a year after the order under Order 21, Rule 101 was passed, The trial Court gave effect to that contention but the learned District Judge held that the plaintiffs' suit is not-barred under the above article of the Limitation Act. In this appeal the appellants argue on the same line as adopted by the learned Munsif. What happened was this: The plaintiffs as decree-holder-auction-purchasers took possession of the holding which they purchased in execution of the decree but were dispossessed therefrom by order of Court by the defendants claiming to possess the property on their own account and not on behalf of the judgment-debtor. The plaintiffs thereupon became aware that their tenant had parted with the holding wrongfully and brought the present suit for ejectment. The question raised in the

suit is whether the tenants had a transferable or a non-transferable interest in the holding.

2. Order 21, Rule 100, contemplates a case where a person has been dispossessed by an auction-purchaser taking possession of the property through the help of the Court. He then complains to the Court of such dispossession and the Court after making; a summary investigation if it holds that the applicant was in possession of the property on his own account and not on account of the judgment-debtor, directs under E. 101 that possession be given back to the applicant. The party against whom this order is passed may then institute a suit under Order 21, Rule 103 to establish the right which he claims to the present possession of the property. Reading these sections together it cannot be questioned that the suit contemplated by E. 103 is a suit by a person who is kept out of possession of the property purchased in execution of the decree and claims possession under his auction-purchase. It does not concern itself with any other cause of action which such person apart from his character as auction-purchaser may have against the defendant. If a suit is not brought under Rule 103 within the statutory period the right to bring a suit to establish the claim of the plaintiff as auction-purchaser for possession of the property is lost. But if he has any other cause of action against the opposite party, it cannot be said that this provision in this chapter relating to execution of decrees bars his suit based on such cause of action. In the present case the suit is brought by the plaintiffs not in their character as auction-purchasers but as landlords. In the plaint, the cause of action in the suit is based not on the adverse decision against them in proceedings under Rule 100, but on the transfer by the tenants of their non-transferable occupancy holding the information of which he got "during the course of the execution proceedings. The causes of action of the two suits one under Rule 103 and another as brought by the plaintiffs must, therefore, be different. In a suit under E. 103, the cause of action must be the adverse decision passed under E. 101. But the present suit is based upon a different state of facts. The cause of action is not the loss of possession by the defendants from the plaintiffs in connexion with the execution proceedings but the fact that the tenants had unlawfully transferred a non-transferable occupancy holding to the defendants and hence the holding is treated as abandoned under the Bengal Tenancy Act and the landlords are therefore, entitled to possession of the holding which the defendants are in possession of as trespassers. But it is argued by the learned vakil for the appellant that u/s 22, Bengal Tenancy Act, the landlords having purchased the holding in execution of the rent decree the tenancy got merged in the landlord's superior interest and, therefore, the only remedy the landlords now have is to proceed as auction-purchasers under Order 21, Rule 103 their character as landlords having been lost by virtue of the purchase of the holding. We do not think that this contention is right. It is the case of the defendants that the tenants had a transferable occupancy holding. It further appears that the defendants are in possession of the land for more than 12 years. He accordingly contends that the

plaintiffs are not entitled to possession because the tenants had a transferable interest in the holding and that the defendants have acquired the rights of the tenant in it. The present suit as brought by the plaintiffs is totally unconnected with the execution proceedings. It seems that the plaintiffs have abandoned all their rights in the execution sale, it having been found against them that the defendants are entitled to immediate possession. In these circumstances we do not think that the present suit is barred under Article 11-A of the Limitation Act.

3. The appeals accordingly fail and are dismissed with costs two gold mohurs in each case.