

(1932) 12 CAL CK 0007

Calcutta High Court

Case No: None

Priyambada Debee

APPELLANT

Vs

Bholanath Basu

RESPONDENT

Date of Decision: Dec. 20, 1932**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 167

Citation: AIR 1933 Cal 534 : 145 Ind. Cas. 663**Hon'ble Judges:** Mitter, J; Jack, J**Bench:** Full Bench

Judgement

Mitter, J.

This Rule is directed against an order of the Subordinate Judge of Burdwan, by which he allowed an application made under Order 21 Rule 100, Civil P.C, by some of the opposite parties to the present Rule. Sreemati Priyambada Debee, the petitioner in the present Rule, is the patnidar of the lot mahal Pingur in Burdwan. The opposite parties Nos. 1 to 10 claim to be the sepatnidars of the said mehal. She brought a suit for recovery of the darpatni rent for the years 1331 to 1334 B.S. against Praphulla Datta and others, the darpatnidars. The suit was decreed and in execution of the rent decree she purchased the darpatni on 2nd December 1929. The opposite parties made an application for setting aside the sale. That application was numbered as Misc. Case No. 28 of 1930. A compromise was arrived at between the parties and it was agreed that, if the opposite parties deposited the decretal amount by 29th April 1931 the sale would be set aside, otherwise the sale would be confirmed. The payment not having been made as agreed, the sale was confirmed on 2nd May 1931 and the petitioner took possession through Court on 9th July 1931. On 6th August the opposite parties Nos. 1 to 10 applied under O.21, Rule 100, Civil P.C.

2. The petitioner came to know on 9th July 1931 that the opposite parties Nos. 1 to 10 were in possession as sepatnidars and she had a notice served on them u/s 167,

Ben. Ten. Act, to annul their incumbrance and the notice was served on 16th January 1932. The learned Subordinate Judge allowed the opposite parties' application under Order 21, Rule 100 of the Code, and directed that the opposite parties Nos. 1 to 10 do recover possession from the petitioner. The present Rule has been obtained by the petitioner against the order of the Subordinate Judge. The Subordinate Judge in his judgment noticed the fact that the opposite parties disputed the allegations of the petitioner, (1) that the decree was a rent decree and (2) that the notice u/s 167, Ben. Ten. Act, had been served, but proceeded to base his judgment on the assumption that the petitioner had established both these allegations, and held that, as at the date of their application under Order 21, Rule 100, the opposite parties were in possession on their account, their application should succeed and this notwithstanding the fact that at the time of the hearing of the application the sepatni had been annulled by notice duly served u/s 167, Ben. Ten. Act.

3. It is contended for the petitioner that the Court below has acted with material irregularity in the exercise of its jurisdiction in refusing to look at events subsequent to delivery of possession. We are of opinion that this contention is right and must be given effect to. We think that it is the duty of the Court, which still retains control of the judgment to take such action as will shorten litigation, preserve the rights of both parties and best subserve the ends of justice: see *Ramyad Sahu v. Bindeswiri Kumar* (1907) 6 C L.J. 102. Courts have gone so far as to hold that in exceptional cases it is not only competent, but it is the duty even of a Court of appeal to take notice of events which have happened since the order challenged in, appeal was made. Here, the event, viz., service of notice, had been effected before the judgment was rendered in the proceeding under Order 21, Rule 100, and the sepatni had been annulled, as the notice was served within a year of the date of the confirmation of sale, so, at the date of the order the sepatnidars could not be held to be in possession on their account within the meaning of Order 21, Rule 100.

4. The opposite parties have not placed sufficient materials before the Court to show that the sepatni was created before the darpatni, which was avoided by the sale, so as to entitle the Court to hold that the sepatni was not an incumbrance created by the defaulting patnidar and could not be avoided by the patnidar. No patta and kabuliyat are forthcoming with respect to the sepatni and it would seem from the evidence of Nalinakhya Basu, witness 1 for the applicant, that the sepatnidars were paying the darpatni rent to the patnidar under an arrangement with the darpatnidar and that they pay Rs. 33 as munafa to the darpatnidar. All this would go to show that the sepatni was created by the defaulting darpatnidars or their predecessors in interest and the incumbrance of the sepatni was annulled by notice u/s 167, Ben. Ten. Act. It is unfortunate that the opposite parties have not appeared before this Court to show cause; but we have examined the records and we are of opinion that the Rule must be made absolute and the order of the Subordinate Judge must be set aside. The application of the opposite parties under Order 21, Rule 100, Civil P.C,

must be dismissed. There will be no order as to costs.

Jack, J.

5. I agree.