

(1866) 08 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 921 of 1866

Sheik Afzal Ali

APPELLANT

Vs

Lala Gaurnarayan and Others

RESPONDENT

Date of Decision: Aug. 31, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

In this case the plaintiff was not a person liable under the decree, but he was the holder of the tenure sold under it. The Judge finds that the transfer of the tenure to him had not been registered. Then comes the question, whether he, not being the registered owner of the tenure which was sold under the execution, can sue in the Civil Court to have it determined whether, under the circumstances, that tenure could be sold under the execution, after the amount due under the decree had been deposited. It is clear, we think, that the plaintiff must have some means of having the question determined. If he was bound to come in as an intervenor under s. 106, Act X of 1859, then it would have been tried by the Revenue Court; if he was not bound to come in under s. 106, he had a right to say that "under a decree against another person, you have sold my tenure, and I will have an action in the Civil Court to decide whether you had the right to sell it or not." The defendant had a right to plead in the Civil Court, or in any other Court which had jurisdiction to try the question, that "this tenure, whether it was assigned to the plaintiff or not was saleable, the transfer not having been registered in the sherista." On the other hand, the plaintiff had a right to contend that the tenure having been assigned to him, although saleable in his hands if the money had not been deposited, the transfer not having been registered, was not saleable after the money due under the decree had been deposited in the name of the debtor. It appears to us that, even if he had a remedy under s. 106, he still had a right, if he pleased, to bring his action in the Civil Court to try that question. If he had come in under s. 106 as an intervenor in the Revenue Court, and the Revenue Court had decreed against him, he might, under s. 107, have brought a suit in the Civil Court within one year to contest that decision. It is clear that he would have had a right to have the decision

of the Civil Court if he had intervened and the case had been determined against him; but we think that he was not bound to intervene, and that he had a right to sue in the Civil Court to try whether the tenure could be sold after the money due upon the decree was deposited notwithstanding s. 151. The Division Bench has already decided that the Judge's decision is wrong. It is therefore reversed with costs, and the decision of the first Court is affirmed.

2. This decree is to be registered.

¹See *Meah Jan Munshi v. Kurrunai Mayi Bebi*, 8 B.L.R., 1. See also *Nilmani Bonick v. Puddo Lochun Chuckerbutty*, ante, p. 379; and *Ramsunder Poramanick v. Prassanna Kumar Bose*, ante, p. 382.