

(1878) 06 CAL CK 0005

Calcutta High Court

Case No: None

Abdool Bari

APPELLANT

Vs

Ramdass Coondoo
and Others

RESPONDENT

Date of Decision: June 14, 1878

Citation: (1879) ILR (Cal) 607

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

The object of the present suit was to recover from the defendant certain land which he (defendant) was holding within the taluk purchased by the plaintiff at a revenue-sale on the 29th March 1863. As the case comes before us in special appeal, the defendant claims the benefit of Section 53 of Act XI of 1859, it having been found that the defendant is a non-resident cultivating ryot, having in that capacity also a claim to be protected u/s 37 of the same law. The Courts below have decided against him on both grounds; and the chief point which we have to consider is, whether Section 53 really applies to the present case or not. The facts are these: Previous to the revenue-sale, and previous to the occurring of the default which brought about the revenue-sale, a default having arisen from non-payment of the revenue payable on the 19th January 1863, the plaintiff had purchased, at an execution-wale in the Civil Court at Sylhet, certain mouzas, which were held and enjoyed by the ex-zamindar Krishna Churn, in the year 1269--that is to say, about the latter part of 1862. That sale, however, was not immediately confirmed, because objections were raised, and the confirmation of the sale took place on the 9th February 1863. It is alleged, and perhaps truly, that, the objections were abandoned by reason of a default in the payment of revenue having occurred. It may also be true that default in the payment of revenue had taken place by reason of the execution-sale. But in any case it is clear that the plaintiff, when he bid for this property at the revenue-sale, viz., in March 1863, was at that time, by virtue of the

sale which had been finally confirmed in execution of decree, owner of the rights of one of the co-sharers in the estate--that is to say, a co-partner, and I think it also clear that in virtue of such co-partnership, although the certificate of sale was not in his hands, he might, if he chose, on or before the 19th January 1863, have paid in the amount of revenue due on that date. That being so, it appears to me that the case comes within the plain provisions of Section 53, and that the plaintiff was a person who was an unrecorded co-partner in an estate, and who purchased in March, although the purchase relates back to January, the estate of which he was the co-partner. That being so he took the estate subject to all its encumbrances existing at the time of sale, and did not acquire any rights in respect to under-tenants or ryots, which were not possessed by the previous proprietor at the time of the sale in execution. Taking this view of the case. I think the judgment of the Court below must be set aside, and the plaintiff's suit dismissed with costs.

2. We understand this decision to be sufficient for the purposes of the present appeal. If the tenure of the defendants is such that the previous owner could have evicted them after notice, then, of course it will be open to the now plaintiff to take any step which his predecessor might have taken.