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(1867) 02 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 315 of 1865

Gunga Doss Dutt	APPELLANT
Vs	
Ram Narain Ghose and Others	RESPONDENT

Date of Decision: Feb. 22, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.
We think that the rule laid down in the case cited does not apply to the present case. When the tenure of a tenant, admittedly in possession, is sold under Act X of 1859, in execution of a decree for rent, he has no right to sue for the reversal of the sale. The plaintiff did not, before the sale, appear under s. 106 to urge his claim before the Collector. If he had, on his objections being overruled, he would have been allowed to sue within a year from the date of the adjudication by the Collector upon his claim. But as he did not so appear, his present suit is not affected by the provision of s. 107[(1)]. The plaintiff has a right to bring his action in the Civil Court to set aside the sale alleged to have been procured by fraud, or to restrain the defendants from availing themselves of rights acquired by such sale. The case must therefore be sent back to the Division Bench for orders.

[(1)] See Bang. Act VIII of 1869, ss. 33, 34 and 63.