

(1881) 03 CAL CK 0014

Calcutta High Court

Case No: None

Azizoonnessa Khatoon

APPELLANT

Vs

Gora Chand Dass and
Others

RESPONDENT

Date of Decision: March 18, 1881

Citation: (1881) ILR (Cal) 163

Hon'ble Judges: Pontifex, J; Field, J

Bench: Division Bench

Judgement

Pontifex, J.

We think that the order of the Subordinate Judge in these three cases is an erroneous one. It appears that a certain undertenure was sold in execution of a decree for rent, and after this sale, an application was made to the Subordinate Judge u/s 311 of the CPC to have the sale set aside on the ground of material irregularity in publishing or conducting it, together with substantial injury caused by reason of such irregularity.

2. The Subordinate Judge was of opinion that the provisions of Section 311 of the CPC did not apply to the sale of an undertenure, to a sale held, as he puts it, under the provisions of Sections 59 and 60 of the rent Act. He says, that Section 511 of the CPC can only apply to sales made under chap. XIX of the same Code, and that, inasmuch as the sale of the undertenure was made under the provisions of the rent Law, it was not a sale made under the provisions of chap. XIX of the Code of Civil Procedure.

3. Now Sections 59 and 60 of Beng. Act VIII of 1869 do not contain any sale procedure. Section 59 provides that, when an undertenure is ordered to be sold, a notice of such sale shall be hung up in certain places and shall otherwise be notified in a particular manner. This mode of notification differs in some respects from the provisions of the CPC on the same subject. Section 60 contains instructions as to the contents of such notice, and here also there is a difference between these

provisions, and the corresponding provisions of the Code of Civil Procedure. These two Sections or any other portions of the rent Act of 1869 do not, however, contain any provisions as to the manner in which the sale is to be conducted, the person by whom the property is to be sold, the manner in which the biddings are to be made, the amount to be deposited by the purchaser, and all those other matters which taken together constitute the sale procedure? The question then is, where are we to look for this sale-procedure? Before the passing of Beng. Act VIII of 1869, this sale procedure was contained in the Beng. Council's Act VIII of 1865. That Act has not been incorporated in Beng. Act VIII of 1869, and it appears to us that there can be no doubt that the sale procedure in the case of an under tenure must be sought for in the Code of Civil Procedure. This seems to follow from the provisions of Section 34 of Beng. Act VIII of 1869, which directs that, " save as in this Act is otherwise provided, suits of every description brought for any cause of action arising under this Act, and all proceedings thereon, shall be regulated by the Code of Civil Procedure." If there can be any possible doubt as to these words being sufficiently wide (sic) to include proceedings such as those in the case now before us, that doubt is removed by the provisions of Section 647 of the Code of Civil Procedure, which enacts, that " the procedure herein prescribed shall be followed in all proceedings in any Court of Civil jurisdiction other than suits and appeals" It is, therefore, clear that the sale procedure, under which an under tenure is sold, is to be sought for in the Code of Civil Procedure, and it follows with reference to the special language of Section 311, that an undertenure is really sold under chap. XIX, that is, in accordance with those provisions as made applicable to rent suits by the sections above quoted. We think, therefore, that the order of the Subordinate Judge in these cases must be set aside, and that he must be directed to entertain and proceed with the petition of objection made u/s (sic) B\1 , Costs will abide the ultimate result of the proceedings.