

(1917) 02 CAL CK 0029**Calcutta High Court****Case No:** None

Rajani Kanta Sarkar

APPELLANT

Vs

The Midnapur Zamindary Co.
and Another

RESPONDENT

Date of Decision: Feb. 20, 1917**Citation:** 38 Ind. Cas. 701**Hon'ble Judges:** John Woodroffe, J; Asutosh Mookerjee, J**Bench:** Division Bench**Judgement**

John Woodroffe, J.

The plaintiff is a purchaser of a holding from a tenant of the Midnapur Zemindari Company. This Company refused to register the plaintiff, as he was unwilling to pay an enhanced jama and selami which were demanded. On three occasions suits for rent were brought by the Company against the original tenant and the property was sold. The plaintiff then applied u/s 310A of the CPC and deposited the rent sued for. No objection was taken by the Company, who took the money which the plaintiff had deposited in Court. Now, having done this the question is this, can the Midnapur Zemindari Company say that the plaintiff has no title when they have taken the money which was deposited under the provisions of Section 310A? It seems to me clear that they cannot do so. Section 310 A applies to applications by persons whose Immovable property has been sold under the provisions of (he chapter in which it appears. It was open to the Midnapur Zemindari Company to dispute the plaintiff's right to apply under that section and to point out, as they now contend, that he wa3 not a person whose Immovable property had been sold, because he had not acquired any right to the property by his purchase, as against them; they did not, however, do so. The learned Subordinate Judge says: "as the Court is bound under the section to set aside the sale if it accepts the deposit, the decree-holder cannot question under the section the right of the plaintiff to deposit the money." The observation, however, will only apply on the assumption that the plaintiff was a person who was entitled to make an application u/s 310A. The

Company did not object to the applicability of that section, and has, therefore, 4n my opinion, recognised the plaintiff. The learned Munsif sets out in his judgment the reason why this is so.

2. I am of opinion, therefore, that the judgment and decree, appealed from should be reversed, and the decree of the Munsif should be restored with costs in all Courts.

Asutosh Mookerjee, J.

3. I agree.