
(1935) 02 CAL CK 0031

Calcutta High Court

Case No: None

Biswanath Rai

APPELLANT

Vs

Manik Sardar and Others

RESPONDENT

Date of Decision: Feb. 22, 1935

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 158B, 159, 161, 167, 174(1)

Citation: 168 Ind. Cas. 386

Hon'ble Judges: R.C. Mitter, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

R.C. Mitter, J.

The question involved in this Rule is whether the petitioner "before me has the right to deposit the decretal amount with compensation under the provisions of either Section 174, Sub-Section (1) of the Bengal Tenancy Act or Order XXI, Rule 89 of the CPC and thereby to set aside the Court sale.

2. These facts are admitted. Four persons, namely, Biswanath Rai (petitioner), Santosh Tikadar, (now dead), father of opposite parties Nos. 3 and 4, Estambar Tikadar and Ghatak Chandra Tikadar (husbands of opposite parties Nos. 5 and 6 respectively) held some lands as under-ryots. Sixteen bighas out of these were held under them by Mauik Sardar (opposite party No. 1). Manik was accordingly an under-ryots of the second degree. Under Manik, Biswanath Rai (petitioner) is a tenant in. respect of 41 bighas of land. He is; therefore, ail under-ryot, of the third degree. In the locality" there is, no custom by which underryots can acquire occupancy rights. Biswanath and Sasi Bhusan instituted in the year 1931 a suit against Manik Sardar for recovery of arrears of rent making Estatnbar and Ghatak pro forma defendants. They recovered a decree on December 7, 1931. On June 26, 1933, the said decree was put into execution and the lands com prised in the

tenancy of Manik were put up to sale and purchased by opposite parties Nos. 5 and 6 on September 16, 1933. Bis wanath Rai in his character as a sub-tenant of Manik Sardar deposited in Court the decretal amount with compensation on October 23, 1933, (the date when the Civil Court re-opened) and applied to set aside the sale under the provisions of Section 174(1) of the Bengal Tenancy Act, in the alternative under Order XXI, Rule 89 of the Code of Civil Procedure. Both the Courts below have held that he has no locus standi to make the said deposit. It is admitted that if his interest as sub-tenant of Manik Sardar is affected by said sale he has the right otherwise not, The ultimate question, therefore, depends upon the effect of the aforesaid sale. If it has the effect of a sale under the special procedure of Chap. XIV of the Bengal Tenancy Act, the auction purchaser would have the right to annul the interest of the petitioner and he would have accordingly the right to make the deposit. If, however, the sale only passed the right, title and interest of Manik, he would have no such right.

3. Section 158-B states that where "a tenure or holding" is sold in execution of a decree for arrears of rent due in respect thereof, the tenure or holding shall pass to the purchaser, not merely the right, title and interest of the judgment-debtor. Section 159 states:

where the tenure or holding is sold in execution of a decree for arrears due in respect thereof the purchaser shall take with power to annul the interest defined as encumbrances.

4. The interest of an ordinary under-ryot is admittedly an encumbrance. Before the amendment of the Bengal Tenancy Act by Act IV of 1928 the term holding was defined to be a parcel of land held by a ryot. But the amendment of 1928 has extended the definition of a holding in two ways, one of them being that land held by an under-ryots is to be regarded as a holding also. Mr. Mullik appearing on behalf of the petitioner contends that the cases before the amendment of 1928 which laid down that the sale of the lands comprised in the tenancy of an under ryot in execution of a decree for rent due in respect thereof could not be held under the special procedure of Chap. XIV of the Bengal Tenancy Act, but such a sale had the effect only of a money sale under the Code of Civil Procedure, are no longer law by reason of the said amendment. He says that two conditions and two only are necessary to bring the procedure of Chap. XIV into operation, namely, (1) that the advertised sale must be of a holding and (2) the decree sought to be executed must be for rent due in respect of the holding to be put up for sale. If Section 158-13 and Section 159 be read simply with the definition of the term holding as contained in Section 3, Sub-section (5), Mr. Mullick's contention would seem to have some force, but I cannot give effect to his contention and I hold notwithstanding the extension of the definition of the word "holding" by the amendment of 1926, the cases decided before 1929 are still good law. For the purpose of examining Mr. Mullick's contention it is necessary to examine some of the provisions of the Act in some

detail. Section 65 of the Act has not been amended in any way by Act IV of 1928, nor Section 65. Section 48(G) has been added. That section deals with the rights and liabilities of under-ryots who have by custom occupancy rights. Chapter XIV is extended to them. Section 163, Sub-section (2) stands as it was before, as also 166, except with a little addition which is not material for the present rule in Section 167, it is stated that a purchaser having the power to annul encumbrances under Sections 164, 165 or 166 can annul the same in the manner indicated therein.

5. In my judgment Chap. XIV regulates the procedure and defines the effect of a sale of a tenure and holding but does not state in what cases the tenure or holding (as distinguished from the sale of the right, title and interest; of the judgment-debtor can be sold, and by whom. For that purpose reference must be made to Section 65 of the Bengal Tenancy Act. The right to bring a tenure or holding is only given to the landlord and not in all cases where he has obtained a decree for rent, but only when such decree is in respect of arrears of rent not of all classes of tenures, or holdings but of certain classes only, namely (a) permanent tenures, (b) ryoti holdings held at fixed rent or (c) the holdings of occupancy ryots. In *Forbes v. Bahadur Singh* 41 I.A. 91 at p. 97 : 23 Ind. Cas. 632 : 18 C.W.N. 747 : (1914) M.W.N. 397 : 15 M.L.T. 380 : 12 A.L.J. 653 : 27 M.L.J. 7 : 41 C. 926 : 1 L.W. 1059 : 25 C.L.J. 434 Mr. Ameer Ali pointed out that Sections 65 and 66 of the Bengal Tenancy Act cover practically the remedies provided by law for the landlord to recover arrears of rent, " and one section is the exact corollary of " the other He further held that the right to bring a tenure or holding to sale is derived solely from the provisions of Section 65 and when a person has such a right derived from the said section, he can employ the special procedure provided for in Chap. XIV. In the case before him he held that a person who had already parted with his zemindari interest before he instituted a suit for rent against a patnidar is not a person who can claim the right to bring the patni tenure to sale u/s 65 and restrained him from proceeding with the sale thereof under the provisions of Chap. XIV.

6. The scheme of Chap. XIV is that whenever a sale is to be held of a tenure or holding under the provisions of the said chapter, the power and rights of the auction-purchaser are to be stated and defined in the sale proclamation. This is very proper, for these factors would have a material bearing upon the value of the property and would regulate the bids. Even after the amendment of 1928, an ordinary under ryoti interest is not included in Sub-section 2, Clause (b) of Section 163. It mentions only occupancy holdings, which means only the occupancy holding of a ryot and the occupancy holding of an under-ryots who has occupancy rights by custom. Sections 164 and 165 deal with sales of a tenure and holdings of ryots held at fixed rent. In Section 166 the procedure of sales of occupancy holdings and the rights of a purchaser at such a sale are defined. He is given the right to annul encumbrances in the manner provided for in Section 167. There is no section in Chap. XIV which deal with either the manner of sales of other holdings e.g. holding of an ordinary underryyot or the rights of a purchaser of such holdings and Section

167 only annuls the mode of annulling encumbrances by a purchaser in respect of a sale held under Sections 164 to 166. This would indicate that the sale of an ordinary under-ryots holding, that is where the under-ryots has no occupancy ryot by custom, is not in contemplation in Chap. XIV, nor is the purchaser of such a holding, if it is brought to sale, given the right to annul encumbrances. This is fortified by the position that whereas the Legislature has provided for the application of Chap. XIV to the sales of under-ryoti holdings where the under-ryot has by custom occupancy rights (s. 48-G), the Statute is silent in this respect of other under-ryoti holdings, and in the circumstances indicated above, it would be legitimate in my judgment to apply the rule of construction expressed in the maxim *Expressio unius est exclusion alterius*.

7. If the contention of Mr. Mullik be accepted, there would be no reason for not applying the provisions of Chap. XIV to sales of non-permanent tenures, for Sections 158-B and 159, as also Sections 163 and 164, mention the word "tenure" and not permanent tenure. But it has been held by my learned brothers Mitter and Patterson, JJ., that Chap. XIV cannot be invoked for sales of for permanent tenures in execution of decrees for rent due in respect thereof, and the purchaser at such a sale has not the right to annul what have been defined as encumbrances in Section 161. [First Appeals Nos. 160 and 161 of 1931, *Hemlata Devi v. Maharaj Srish Chandra Nandi and Ors.* 39 C.W.N. 505 decided on November 30, 1934]. For these reasons I hold that the Rule should be discharged. It is accordingly discharged with costs, hearing fee one gold mohur.