

Jnanendra Nath Sanyal Vs Girish Chandra Lahiry and Others

Court: Calcutta High Court

Date of Decision: Dec. 20, 1934

Acts Referred: Bengal Tenancy Act, 1885 â€” Section 26E
 Civil Procedure Code, 1908 (CPC) â€” Order 21 Rule 58, 47

Citation: 164 Ind. Cas. 375

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

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

R.C. Mitter, J.

This Rule has been obtained by the landlord decree-holder. On April 14, 1931, he instituted a suit for rent against his

tenant Naib Ali and recovered a decree on June 18, 1931. In the meantime opposite parties Nos. 1 to 5 in whose favour Naib Ali had executed a

mortgage, purchased the holding in execution of their mortgage decree on September 17, 1930. This sale was confirmed on August 17, 1931, and

the notice u/s 26-E of the Bengal Tenancy Act was served on the petitioner on November 21, 1931. The petitioner put his decree in execution on

September 7, 1933. The opposite parties Nos. 1 to 5 filed an objection purporting to be u/s 47, of the CPC in which they alleged that the

execution could not proceed. It is not necessary to consider at this stage the merits of the said objection. It appears from the judgment of the Court

below that the petitioner considered the opposite parties Nos. 1 to 5 to be representatives of the judgment-debtor, Naib Ali, and applied to make

them parties to the execution proceedings as such representatives. The learned Munsif took up for consideration the objection of opposite parties

Nos. 1 to 5 and the application of the decree-holder petitioner to bring on record, or to substitute as the learned Munsif has stated, the opposite

parties Nos. 1 to 5 as representatives of the judgment-debtor. As the objection of the opposite parties Nos. 1 to 5 and the said application of the

decree-holder raised some points in common, he considered them together. Now it is well settled that a transferee from the judgment-debtor or a

purchaser of his interest at auction sale is a representative of the judgment-debtor within the meaning of Section 47 of the Code only if the decree

binds him or affects his purchase. See *Ishan Chandra v. Benimadhav Sarkar* 24 C 62 : 1 CWN 36. The learned Munsif came to the conclusion

that the decree obtained by the petitioner was a money decree. He held accordingly that opposite parties Nos. 1 to 5 were not the representatives

of the judgment-debtor. He also held that as the decree was a money decree the property in the hands of the opposite parties Nos. 1 to 5 could

not be attached or sold as they were not parties to the decree. He supported to give relief to the opposite parties Nos. 1 to 5 on the basis of

Order XXI, Rule 58 of the Code. The petitioners preferred an appeal to the learned District Judge which was heard by the Subordinate Judge,

3rd Court, Mymensingh. A preliminary objection was taken that no appeal lay. The learned Subordinate Judge gave effect to the preliminary

objection on the ground that the Munsif did not pass any order coming within the purview of Section 47 of the Code but granted relief to the

opposite parties Nos. 1 to 5 under Order XXI, Rule 58.

2. In my judgment, the learned Subordinate Judge has wrongly decided the preliminary objection. He has overlooked the fact that the petitioners

wanted to substitute opposite parties Nos. 1 to 5 in the execution proceeding as representatives of the judgment-debtor Naib Ali. The execution

Court is bound to decide the question as to whether they were the representatives of the judgment-debtor. This is one of the questions falling within

Section 47 of the Code. The learned Munsif decided the said question against the petitioner. That being so an order u/s 47 was made by the

Munsif and his order is appealable: *Khem Singh and Others Vs. Raghubir Singh and Others, Badri Narayan v. Jai Kishen Das* 16 A 483 : 1894

AWN 184, Krishnama Chariar v. Appasami 25 M 545 : 12 MLJ 280 and *Ganga Das Seal v. Yaqub Ali* 27 C 670. This Rule is accordingly made

absolute, and the case sent back to the lower Appellate Court for determination of the questions involved in the appeal preferred before it by the

petitioner. Costs to abide the result, hearing fee gold mohur. This judgment will govern Civil Rule No. 953 of 1934. The said Rule is also made

absolute on the same terms.