(1918) 06 CAL CK 0052

Calcutta High Court

Case No: None

Indra Narain Ray		APPELLANT
	Vs	
Nabin Chandra Banerjee and Others		RESPONDENT

Date of Decision: June 6, 1918

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 148A, 167

Citation: 47 Ind. Cas. 847

Hon'ble Judges: Walmsley, J; Fletcher, J

Bench: Division Bench

Judgement

1. This appeal will stand dismissed. Two grounds have been raised before us, and they are these: First of all, it is said that the present suit is a suit for possession of about 4 bighas of land, the plaintiff claiming through a purchase in execution of a rent decree. The plaintiff''s claim was rasisted by certain mortgagee purchasers, who had a mortgage of this property which is a part of a holding and who had purchased in execution of their mortgage-decree. The foundation of the plaintiff''s claim is that he is the purchaser in execution of a rent decree. Otherwise, he would only get the right, title and interest of the judgment-debtor. It is said that the rent suit is a special suit, namely, a suit brought by a co-sharer landlord u/s 148A of the Bengal Tenancy Act. But the learned Judge has found that the plaintiff had failed to show that he had brought the case within the provisions of Section 148A.

2. The second point is also equally against the plaintiff. In a case like the present, the defendant has got an incumbrance on the property because for the purpose of the present suit he in entitled, having regard to the decision in Banbihari Kapur v. Khetra Pal Singh 13 Ind. Cas. 785 : 38 C. 923 : 16 C.W.N. 259, to fall back on his mortgage as a shield against the purchase of the plaintiff. If that be so, he cannot be ejected until his encumbrance is annulled under the provisions of Section 167 of the Bengal Tenancy Act. We agree with the conclusion arrived at by the learned Judge of

the lower Appellate Court. The present appeal, therefore, fails and must be dismissed. The appellant must pay to the respondent his costs in this appeal.