Ambika Debi and Another Vs Pranhari Das and Others

Court: Calcutta High Court

Date of Decision: Sept. 10, 1869

Judgement

Sir Barnes Peacock Kt., C.J., Macpherson, Mitter and Hobhouse, JJ.
It appears to me that the suit will lie. Clause 4, section 13,

Regulation VIII of 1819 says, that the money paid to preserve the tenure shall be considered as a loan paid to the proprietor of the tenure

preserved from sale by much means, and the talook so preserved shall be the security to the person or persons making the advance, who shall be

considered to have a lien thereupon in the same manner as if ""the loan had been made upon mortgage."" If it is to be considered as a loan, then all

the remedies which the law allows for the recovery of loans must apply to this case, unless there are words to show that that has not been the

intention of the Legislature. I thought at one time that the word the"" before the word security"" was intended to show that the talook preserved was

intended to be the only security. But that could not have been the intention of the Legislature, for the owner of an under-tenure might have to pay

more to save his under-tenure than the superior tenure which he obtains as a security is worth. In order, therefore, to give the owner of the under-

tenure, who is compelled to pay money in order to save his under-tenure, a sufficient security, he must not only have the security of the tenure

which he preserves, but also the right of action to recover the loan, if be considers it necessary. It appears that in this case the amount sued for is

below rupees 500, and that the suit is brought to recover simply a sum of money. There is, therefore, no appeal in this case. The appeal is,

therefore, dismissed, with the ordinary costs of the appeal.

2. This decision also governs Special Appeal, No. 3299 of 1868. The appeal is, therefore, dismissed with the ordinary costs of this appeal.

Kemp, J.

As I was one of the Judges who decided the case of Kartick Surmah v. Bydonath Saeenee 10 W.R. 205, I desire to say that I entirely concur in

the judgment which has just been delivered by the Chief Justice. I was under the impression that the talook which was protected from sale by the

deposit made by the darpatnidar or sapatnidar , as the case may be, was the only security the depositor had, and that a suit to recover the loan

would not lie. I have no doubt that my opinion was wrong, and I concur in the conclusion at which may learned colleagues have now arrived.

1 Regulation VIII of 1819, section 13, clause 4.--If the person or persons making such a deposit, in order to stay the sale of the superior tenure,

shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a

disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against future demands for rent, but shall be

considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the talook so preserved shall be the security to

the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made

upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to

recover the amount so advanced from any profits belonging thereto. If the defaulter shall desire to recover his tenure from the hands of the person

or persons, who by making the advance, may have acquired such an interest therein, and entered in possession in consequence, be shall not be

entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent per annum, up to the date of

possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced,

with interest, has been realized from the usufruct of the tenure.