

(1909) 06 CAL CK 0043

Calcutta High Court

Case No: None

Haro Chandra Poddar

APPELLANT

Vs

Umesh Chandra Bhattacharjee
and Another

RESPONDENT

Date of Decision: June 8, 1909

Judgement

1. The plaintiff in this case sued on a mortgage of a holding and was resisted by a co-sharer landlord who had purchased the holding in execution of a decree of his own. This defendant pleaded that the holding was not transferable. The Subordinate Judge following Ayenuddin Nasya v. Srish Chandra Banerji 11 C.W.N. 76, held that the question of transferability did not arise and decreed the suit, modifying the decision of the Munsif. The landlord defendant appeals.

2. We think that under the circumstances of this case the decision of the learned Subordinate Judge is right. The case cannot be distinguished from the ruling cited above for it makes no real difference whether the defendant in a suit of this nature is a co-sharer landlord or a tenant who claims under a lease from a co-sharer landlord. A tenant in such a case would be entitled to plead his lessor's rights to object to the plaintiff's purchase, if his lessor had any such right. Here the defendant himself is a purchaser without the landlord's consent, using the term landlord in its proper signification of the whole body of landlords. He would never have been made a party to this suit, if it had not been for this purchase. But he is defending the suit, not as a purchaser, but-under his original title as co-sharer landlord; which is not questioned in the suit at all. Assuming, though not admitting, that he might conceivably resist the plaintiff's claim, so far as it affected the extent of his interest as a landlord in the land in salt, we think the ruling cited is a clear authority that he cannot resist the plaintiff's whole claim, which is the only question raised in this suit. There is no decision exactly in point to support the appellant's contention, for the decision in Achanulla Sarkar v. Salemonessa Bibi 9 C.W.N. 14., quoted by the Subordinate Judge is not authoritatively reported and the facts are not fully stated. In these circumstances we do not think that the appeal should

prevail and dismiss it with costs.