
(1920) 06 CAL CK 0044

Calcutta High Court

Case No: None

Entazuddi Sheikh

APPELLANT

Vs

Ram Krishna Banik and Others

RESPONDENT

Date of Decision: June 21, 1920

Citation: 60 Ind. Cas. 745

Hon'ble Judges: Teunon, J; Newbould, J

Bench: Division Bench

Judgement

1. This appeal is "directed against an order made by the District Judge of Faridpur on 15th July 1919, by which he confirmed the sale of certain occupancy holdings being the property of an insolvent vested in a Receiver under the provisions of Section 18 of the Provincial Insolvent Ast. In the Court below the District Judge dealt at great length with the sale ability of occupancy holdings without the consent of the raiyat. That matter has been concluded by the decision of a Special Bench in the case of Chandra Benole Kundu v. AlaBux not yet reported. The result is that before us nothing has been said on that point, and the contentions advanced by the learned Pleader for the insolvent are these, (1) that the insolvent is only a part-owner of these occupancy holdings; (2) that some of the properties sold are not occupancy holdings, but under raiyat holdings; (3) that there is no evidence that the landlord gave ascent to the sale, (4) that no sale proclamation was issued, and (5) that the Receiver is not a necessary party.

2. Nothing need be said with regard to the last point.

2

3. If it be the case that the insolvent is only a part-owner of these occupancy holdings it follow up, on the principle laid down in the Full Bench case of Dayamoyi v. Ananda Mohan Roy 27 Ind. Cas. 61 (F.B) : 42 C. 172 : 18 C.W.N. 818 : 31 C.L.J. 510 that no ascent of the landlord is necessary to the sale. What has been sold by the Receiver in these proceedings is the right, title and interest of the insolvent, and

whether he is the sole owner or only a part-owner of the occupancy holdings is a matter which was not gone into in the Court below and need not be discussed by us in this appeal, The question is one which may have to be decided should the alleged an owner of the insolvent claim an interest in the property sold, Such decision, if necessary will have to be had, in separate proceedings, certainly not now.

4. The judgment of the Court below proceeds on the assumption that a sale by a Receiver is one which should be held in the manner provided for sales in execution of decrees under the Civil Procedure Code. But that view, for which no authority has been placed before us, appears to be a mistaken view. Sales by a Receiver in whom the property of the insolvent is vested are really sales by the owner and may be held either by auction as in the present case or by private treaty. When he proceeded to sell, the Receiver, satisfied himself that he had obtained the consent of the landlord to the sale. That was sufficient for his purposes and is also sufficient for us in these proceedings.

5. Whether some of the properties were, in fact, under-raiyat is a question that was not raised before the Court below, certainly there is no trace of any such question in its somewhat voluminous judgment. If there be any under-raiyat is amongst the properties sold, we can, as at present advised, see no reason, for holding why, at the distance of the Receiver, and with the ascent of the landlord such under-raiyat should not be sold.

6. This sufficiently disposes of the appeal that has been presented to this Court by the insolvent and we now dismiss that appeal with costs. We assess the hearing fee at five gold mohurs to be divided into two equal moieties--one moiety to the Receiver and one moiety to the auction purchasers who have appeared.