

(1928) 02 CAL CK 0036**Calcutta High Court****Case No:** None

Mahim Chandra Banikya

APPELLANT

Vs

Sarafatulla and Others

RESPONDENT

Date of Decision: Feb. 14, 1928**Citation:** 114 Ind. Cas. 789**Hon'ble Judges:** Cammiade, J; B.B. Ghose, J**Bench:** Division Bench**Judgement**

1. This is an appeal by the plaintiff whose suit for declaration of his title to the property in question was dismissed by both the Courts below. There has been a very unfortunate tangle created by the procedure taken by the plaintiff with reference to the holding which is the subject-matter of the suit. The plaintiff says that he was the owner of the holding. It stood originally in the name of his uncle Hara Kumar, but he is the owner of the entire holding. There were two sets of landlords and those who are alleged to have 8 annas share granted the plaintiff some dakhilas in his own name. The other set of landlords are defendants Nos. 3 to 8 in this case in whose sherista the name of Hara Kumar still stands. The defendants Nos. 3 to 8 obtained a decree for rent against Hara Kumar and put the entire holding to sale and it has been purchased by themselves. Thereupon the plaintiff brought this suit for declaration of his title and also for declaration that the rent-decree which the defendants Nos. 3 to 8 obtained against him were not operative as against the plaintiff and he asked for recovery of possession and for wasilat. The Court of Appeal below affirming the judgment of the trial Court held that Hara Kumar was a registered tenant in the office of the defendants Nos. 3 to 8 and the decree obtained against Hara Kumar and the sale thereunder would pass the interest of the plaintiff in the property as the plaintiff allowed Hara Kumar to represent himself, whether the Bale is to be considered a rent sale or a sale in execution of a money-decree. It is contended by the learned Vakil for the appellant that if the sale is not a rent sale the principle of representation does not apply with reference to which principle it has been held in various cases that the interest of an unrecorded tenant passes if the

sale is held in execution of a decree obtained against a person who represents the entire body of tenants. The contention of the appellant again takes this form, that supposing that the plaintiff represented to defendants Nos. 3 to 8 that Hara Kumar was a tenant in their sherista, as a matter of fact he represented to the co sharers of defendants Nos. 3 to 8 that he was himself the owner. It is, therefore, contended that at the utmost the defendants Nos. 3 to 8 could sell the interest of the plaintiff in execution of the decree obtained against Hara Kumar to the extent of the landlords' interest represented by defendants Nos. 3 to 8. It is, on the other hand, contended by the respondents that apart from the question of representation if it is taken that Hara Kumar was the benamidar of the plaintiff in the sherista of defendants Nos. 3 to 8, a decree obtained by defendants Nos. 3 to 8 against Hara Kumar the benamidar, would be binding upon the plaintiff. The execution levied against Hara Kumar with regard to the property of the plaintiff, would bind the plaintiff's interest. It is not necessary that any special rule of law of landlord and tenant should be invoked in order to arrive at this result. It is conceded that if the co-sharers of defendants Nos. 3 to 8 had brought their suit for rent they would not have succeeded in selling the interest of the plaintiff if they had omitted to sue the plaintiff in his own name as they had recognised the plaintiff as their tenant. But although the position is anomalous the defendants Nos. 3 to 8 can certainly put up to sale the interest of the plaintiff by proceeding against Hara Kumar who was represented as the tenant in their sherista, or in fact who was the benamidar of the plaintiff. It seems to us that the contention of the respondents is sound.

2. In that view this appeal must stand dismissed with costs.