

(1912) 04 CAL CK 0060

Calcutta High Court

Case No: None

Maharaja Birendra Kishore
Manikya Bahadur

APPELLANT

Vs

Ahmed Ali and Others

RESPONDENT

Date of Decision: April 11, 1912

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 167

Citation: 15 Ind. Cas. 479

Hon'ble Judges: Mookerjee, J; Carnduff, J

Bench: Division Bench

Judgement

1. This is an appeal on behalf of the first defendant in an action for declaration of title to Immovable property and recovery of possession thereof. The plaintiffs-respondents allege that they are under-tenure-holders and have been deprived of the lands comprised in their tenancy by the appellant, the Maharajah of Tipperah, who obtained a decree for rent against the superior tenure-holder on the 29th February 1884 and in execution thereof purchased the properties on the 6th February 1888. The Courts below have found in favour of the plaintiffs upon the question of the existence of the under-tenure. They have also found that it was necessary for the defendant to annul the under-tenure in the manner prescribed by the Bengal Tenancy Act and that he has not complied with the requirements of the statute. The sole point in controversy thus is, whether it was obligatory upon the defendant to follow the provisions of the Bengal Tenancy Act, and whether by reason of his failure to do so, the title of the plaintiffs remains unaffected. It has not been and cannot be disputed, in view of the decision of the Full Bench in Titu Bibi v. Mohesh Chunder 9 C. 683, that if the sale be regarded as a sale under Act VIII of 1869 B. C., the under-tenure was voidable at the election of the auction-purchaser and no formal notice was necessary as required by Section 167 of the Bengal Tenancy Act. The argument before us has, therefore, centered round the question

whether the sale was under Act VIII of 1869 B. C. or under Act VIII of 1885.

2. The learned Vakil for the appellant has contended that although the execution sale took place on the 6th February 1888, the rights of the parties must be deemed to be regulated by the provisions of the Bengal Rent Act (VIII of 1869 B. C.), which was at the time generally, though erroneously, assumed to govern sales in execution of decrees obtained, as in the case before us, before the Bengal Tenancy Act came into force on the 1st November 1885. Reference has been made to the cases of Lal Mohun Mookerjee v. Jogendra Chunder Roy 14 C. 636 and Uzir Ali v. Ram Komal Shaha 15 C. 383, which were subsequently overruled by the decision of the Full Court in the case of Jogodanund Singh v. Amita Lal 22 C. 767, to show that when the appellant made his purchase in 1888, the provisions of the Statute of 1869 were understood to be applicable to proceedings in execution of decrees made before the commencement of the Bengal Tenancy Act. Reference has further been made to the case of Abdul Aziz Khan v. Appayasami Naicker 31 I.A. 1 : 27 M. 131 : 8 C.W.N. 186, to show that the rights of the parties ought to be determined, not with reference to the true construction of the law but according to the erroneous interpretation prevailing at the time. In our opinion, there is no foundation for this contention. Let it be assumed that in 1868 it was erroneously supposed that a sale in execution of a rent-decree obtained before the 1st November 1885 was governed in its incidents according to the provisions of the Statute of 1869. It does not follow by any means that the defendant can resist the claim of the plaintiffs on the ground that he was under an erroneous impression in 1888 and did not take steps "to have the notice u/s 167 of the Bengal Tenancy Act of 1885 served within the time prescribed thereby. The decision of the Judicial Committee in Abdul Aziz Khan v. Appayasami Naicker 31 I.A. 1 : 27 M. 131 : 8 C.W.N. 186 is, as explained in the case of Khoda Baksh v. Sader Pramanik 10 Ind. Cas. 417 : 14 C.L.J. 620, of no assistance to the appellant. That case is not an authority for the broad proposition that the legal effect of a transaction must be determined in all cases with reference to the law as understood or misunderstood at the time the transaction takes place. In fact, such a view is opposed to the elementary doctrine that judicial decisions merely expound the law and do not make new laws. We must take it, therefore, that the rights of the parties in this case have to be determined with reference to the provisions of the Bengal Tenancy Act. If that position is adopted, there is no room for controversy that the defendant has not acquired any valid title as against the plaintiffs. The notice served u/s 167 was admittedly ineffectual to annul the interest of the plaintiffs. It is also conceded that no question of limitation arises, because it has been found by the Courts below that the defendant has not been in occupation for more than twelve years.

3. The result, therefore, is that the decree of the Subordinate Judge must be affirmed and this appeal dismissed with costs.