

(1917) 08 CAL CK 0057**Calcutta High Court****Case No:** None

Chandi Charan Bandopadhyaya

APPELLANT

Vs

Kazi Jawadal and Another

RESPONDENT

Date of Decision: Aug. 6, 1917**Citation:** 42 Ind. Cas. 624**Hon'ble Judges:** Beachcroft, J; Asutosh Mookerjee, J**Bench:** Division Bench**Judgement**

1. This is an appeal by the plaintiff in a suit for recovery of possession of land on declaration of title. The land belonged originally, to one Srinath Ganguly. The plaintiff claims title by purchase at a sale held in execution of a decree in a mortgage executed by Srinath. The first defendant claims title by purchase at a sale held in execution of a money decree against "the representatives" of Srinath. The defendant purchased on the 8th August 1907, that is, after the mortgage decree had been made on the 26th March 1907 and before the mortgage sale took place on the 6th January 1908. On these facts there can be no room for controversy- that the defendant is bound by the mortgage sale. In support of this position reference may be made to the decision of this Court in the case of Debendra Nath Sen v. Mirza Abdul Samed Seroji (2) The view taken by the Subordinate Judge cannot consequently be supported. But the learned Yakil for the respondent has contended with considerable force that his client as one of the superior landlords is in a position of advantage and is entitled to question the validity of the title by purchase set up by the plaintiff, and he has pressed that the case should be remanded for re-trial from this point of view after proper issues have been raised. We have anxiously considered this point and we have come to the conclusion that the case should not be remanded. It transpires from the judgment of the Court of first instance that this aspect of the case was put forward at a very late stage of the trial and the judgment of the lower Appellate Court does not contain any trace of this point. We are of opinion, therefore, that this appeal should be allowed, the decree of the Subordinate Judge set aside and that of the Court of first instance restored with

costs both here and in the Court of Appeal below.