

(1925) 12 CAL CK 0052

Calcutta High Court

Case No: None

Dost Mahamud Mulla and
Others

APPELLANT

Vs

Majed Ali Nasker and Others

RESPONDENT

Date of Decision: Dec. 15, 1925

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 153
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 100, Order 21 Rule 101

Citation: 95 Ind. Cas. 146

Hon'ble Judges: Duval, J

Bench: Single Bench

Judgement

1. The facts out of which this Rule arises are as follows. The petitioners are the purchasers in a private sale of 5 bighas 9 cottas of land out of an area of 7 bighas 1 1/2 cottas bearing a rental of Rs. 27-8-0 their purchase having never been recognised by the landlord though they appear to be paid part of the rent in the name of the recorded tenants. The opposite party brought a rent suit in, 1920 against the recorded proprietors in the Court of the Munsif at Diamond Harbour, obtained an ex parte decree and in execution of that decree purchased the whole holding at auction and took delivery of possession through Court. Thereupon the petitioners made an application under Order XXIV, Rules 100 and 101, C.P.C., claiming that they should be restored to possession. The learned Munsif, however, held that, as the decree was a rent-decree, the application was not maintainable and against his order the present Rule has been obtained. It appears further that before the Munsif it was argued that the rent decree in question under which the property was sold was not a full rent decree under the Bengal Tenancy Act, but this point is not taken before me. At the hearing of this Rule the opposite party does not appear. Hence the Rule has been heard ex parte. The only question, therefore, is whether Order XXI, Rules 100 and 101 apply. No doubt, the present petitioners were not the

judgment-debtors in the rent suit and the rule runs as follows:

Where any person other than the judgment-debtor is dispossessed of Immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

2. It appears to me, that the learned Munsif is right. It is perfectly clear that the present petitioners not having obtained recognition of the landlord and having purchased part of the molding ware in the position of subtenants of the recorded tenants and in that position they cannot have any better rights than the recorded tenants and were liable on the purchase by the landlord of the whole holding to be ejected. What passed u/s 153 of the Bengal Tenancy Act was the whole holding subject only to the protected interest and it has been held that the interest in a nontransferable occupancy holding need not be annulled as an incumbrance by the landlord purchaser in execution of a rent-decree *Fazarali Mahaldar v. Poroo Mian.* 48 Ind. Cas. (sic) : 28 C.L.J. 266. See also [Barada Prosad Roy Chaudhury Vs. Fojuddi Halder and Another](#), where it has, been held that the transferee of a portion of a holding who has not been recognized is bound by the rent-decree and his interest passes at the sale.

3. In the above view, it must follow that Order XXI, Rule 100 and 101 can have no application in this case.

4. This Rule is, therefore, discharged.