

(1912) 04 CAL CK 0062**Calcutta High Court****Case No:** None

Mohurruddin Khan and Others

APPELLANT

Vs

Sumbra Giri and Another

RESPONDENT

Date of Decision: April 11, 1912**Citation:** 15 Ind. Cas. 540**Hon'ble Judges:** Mookerjee, J; Carnduff, J**Bench:** Division Bench**Judgement**

1. This is an appeal on behalf of the defendants in an action for rent. The case for the plaintiff was that the lands in respect of which rent is claimed were held by one Ishan Chandra Das as tenant, that in execution of a rent-decree obtained against him the holding was sold and purchased by one Khoyarunnessa and that the defendants as her heirs are liable for rent. The defence taken was that these lands did not belong to Ishan Chandra Das but were held by the defendants in their own right as tenants under the plaintiff. The point in controversy between the parties, therefore, was whether the holding belonged to Ishan Chandra Das as alleged by the plaintiff or to the defendants in their own right, as alleged by them. The Courts below have found in favour of the plaintiff on the basis of the recital in the writ of attachment in the proceedings in execution of the rent-decree. It has been contended before us, on the authority of the decision in *Ramani Pershad Narain Singh v. Mahanth Adaiya Gossain* 31 C. 380, that the recital in the writ of attachment was not admissible in evidence in favour of the maker of the statement and as against the defendants. In our opinion, this contention is well founded and must prevail.

2. It is clear upon the terms of Section 316 of the CPC of 1882, that the effect of an execution sale is to vest the title of the property in the purchaser only as between the parties to the suit and their representatives-in-interest. Here the defendants claim title independently of the lady, and not as her heirs. Even if it be admitted, therefore, that the recital in the writ of attachment would have been admissible as

against the execution purchaser, we are of opinion that it was not admissible in evidence in favour of the person who made it, and as against the defendants who claim under an independent title. To hold that the recital is admissible as against them, because they are the heirs of the auction-purchaser, is to argue in a circle, because, if we do so, we assume in substance the answer to the very question which calls for consideration in this case, namely, whether these defendants have taken the disputed property as heirs of the auction-purchaser. The position, therefore, is that this document must be excluded from consideration. But if the document is executed, it turns out that there is no evidence left upon the record to support the theory that the land belonged to Ishan Chandra Das.

3. The result, therefore, is that this appeal is allowed, the decree of the District Judge set aside and the suit dismissed with costs in all the Courts.