(1923) 01 CAL CK 0058

Calcutta High Court

Case No: None

Khetra Mohan De		APPELLANT
	Vs	
Satish Chandra Giri		RESPONDENT

Date of Decision: Jan. 6, 1923

Citation: AIR 1923 Cal 438 : 83 Ind. Cas. 556

Hon'ble Judges: Rankin, J

Bench: Single Bench

Judgement

Rankin, J.

In this case the plaintiff was the putni talukdar and the holding stood originally in the name of Prasanna Kumar Dhar. In the time of Prasanna proceedings were taken by the plaintiff u/s 105. These proceedings began in 1908 and considerable litigation seems to have taken place between 1998 and 1911. Prasanna himself at some stage prior to 1911 died and in that year the plaintiff commenced a rent-suit against his widow which was decreed at a jama of Rs. 14. In execution the holding was sold to the appellant in 1912 and the sale certificate described the jama as being Rs. 14. In 1915 there was another rent-suit against the appellant which was decreed at Rs. 14. But it is quite clear that in this case there was not a decision but only a decree upon the footing that the defendant in the suit consented to that amount and there was no determination as to whether any larger jama was due or not. The present proceedings were brought by a plaint filed on the 14th April 1919, and the difficulty arises out of the circumstances which now come to light; namely, that at the time when the appellant purchased in 1912, the case u/s 105 was pending; that in January 1913 Pra-sanna''s widow, Lakhimani, was ordered to be served with a notice of the proceeding and that on the 15th January the Settlement Officer proceeded ex parte in the absence of any one appearing for her and fixed the jama at Rs. 15-12. The addition would appear to be the ordinary addition put on owing to the rise in the price of local food crops and so far as I can see, only the question of quantum was decided ex parte. It was contended that no proof was to be found that Prasanna''s widow was in fact served but though proof of service is not formally recorded there

is every presumption, on the face of the order-sheet, that she was served. It is difficult to see how this matters to the appellant in any case.

2. In this suit which is brought for rent from 1322 to 1325, the defendant objected that as the increase of rent was given behind his back, the decision u/s 105 was a mere nullity and that when that was shown the learned Judges in the Courts below were obliged in law to hold that the entry in the khatian should not be allowed to override the jama which had been stated in the sale certificate and which had been given by the previous decree. Now, in my opinion, there is no need to discuss any question of res judicata in view of the fast that the suit of 1915 was not decided on this point at all. It is, however, perfectly clear that when the holding was sold in May 1912, Rs. 14 and nothing more was the juma and the only ground that can be suggested for a higher rent is the ground which arises on the fact that a case u/s 105 was started in 1903 and that in January 1913 the rent was increased thereunder. The question of estoppel does not, in my opinion, arise because at the time the sale certificate was granted Rs. 14 was the jama. Any one who buys a holding at an auction must be taken to know perfectly Well that he is buying a holding the rent of which may be enhanceable. If it is subsequently increased by proper process beyond the figure in the sale certificate and previous decrees, the question, of estoppel is not in point. In my judgment the real question is whether, as the learned Vakil for the appellant contends, the Judge in the Court below when he found that the defendant was not a party to the proceeding u/s 105 ought to have said that that decision was a nullity in so far as the defendant was concerned and that his rent which can only be enhanced either by contract or by a decision, had not been validly enhanced and that Rs. 14 was the rent. I should have felt much difficulty myself in resisting that argument of the learned Vakil for the appellant. One can see that in these matters only the recorded tenant can be looked to. But when a landlord sells a holding out and out to an auction-purchaser I should, speaking for myself, be very loath to hold that he can then successfully carry on proceedings against the representatives of the old tenant. The learned Vakil for the respondent, however, has drawn my attention to a case decided as Rasik Chandra Mukhopadhya v. Shayama Kumar Tagore 46 Iad. Cas. 136 by Mr. Justice Fletcher and Mr. Justice Huda. On the facts that case is exactly on all fours with this case except in one respect to which my attention has been called. In that case, the sale was under the Public Demands Recovery Act of 1895 and not under the provisions of the Act of 1913. Under the former Act a sale did not pass the whole holding but only the right, title and interest of the judgment-debtor. That seems to be correct and I accept it but I have found it quite impossible to distinguish this case and the decision in question upon that ground. We are not dealing here with any question of encumbrance created by the tenant and binding his own interest only. The question of the amount of rent is an incident of the holding itself. It does not appear from the report that in the case before Mr. Justice Fletcher land Mr. Justice Huda the tenant in fact had an interest that was in any way short of a complete interest. But however

that may be I fail altogether to see that proceedings u/s 105 taken in these circumstances can be any better against an assignee of the tenant at a time when the landlord knew of the assignment than they are in the case of a person who is an auction-purchaser of the holding itself at the hands of the landlord. The purchaser at a sale in the landlord''s suit for rent brought about by the landlord must be taken in either case to have a title of which the landlord has notice and in either case he becomes the landlord''s tenant when he enters. It seems to me, therefore, that to refuse to follow this dicision upon the basis of that distinction would only be taking a bad point. Decisions such as that cited to me affect practice very widely, are of great importance to many people, and have to be acted upon in many of the inferior Courts. I cannot disregard this decision as obiter as it is clear that the'' assessment of additional rent was not, treated as a nullity. If the assessment at Rs. 15-12 in the present case was not a nullity, the Court below was entitled to give effect to it; indeed I can see no reason to the contrary; the previous rate of rent is no reason at all. I think my duty is to follow the case cited and to dismiss this appeal on its authority.

3. The result is that this appeal is dismissed with costs.