(1866) 02 CAL CK 0012

Calcutta High Court

Case No: Special Appeal No. 2138 of 1865

Prasanna Kumar Bose and Others		APPELLANT
	Vs	
Ramsundar Poramanick and Others		RESPONDENT

Date of Decision: Feb. 5, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

This case is governed by our decision in the case of Nilmani Burnick v. Puddo Lochan Chuckerbutty See Nilmani Burnick v. Puddo Lochan Chuckerbutty, ante, p. 379. The tenure was sold under a decree of the Revenue Court, for arrears of rent, against Bhaggabatti and not against the present plaintiff. If the plaintiff was the real owner of the tenure, and was treated as the proprietor of it by the zamindar by his accepting rent from him for it, his tenure could not be legally sold under an execution fraudulently obtained against Bhaggabatti. If the allegation of the defendant be made out that the tenure really belonged to Bhaggabatti as the heiress of the registered proprietor, and that the plaintiff never purchased the tenure, never was in possession, and never paid rent for it, the case would be different, for, in that case, the tenure would not belong to the plaintiff, but to Bhaggabatti, against whom the decree was obtained and the execution issued. But if the sale of the plaintiff"s tenure was made fraudulently under a decree against Bhaggabatti, the Civil Courts clearly have jurisdiction to set aside the sale, and to restore the plaintiff to his rights. The case will be sent back to the Division Bench which referred it to us, in order that it may be determined with reference to our present decision upon the point of law which has been referred to us.

[(1)] See Nilmani Burnick v. Puddo Lochan Chuckerbutty, ante, p. 379.