(1915) 03 CAL CK 0049

Calcutta High Court

Case No: L.P. App. No. 51 of 1911

Chandi Prasanno Sen		APPELLANT
	Vs	
Gour Chandra Dey		RESPONDENT

Date of Decision: March 30, 1915

Final Decision: Dismissed

Judgement

Coxe, J.

Defendant No. 2 in this case appears to have mortgaged his holding, which is not transferable without consent of the landlord, to the Plaintiff. Before the mortgage the Defendants-Appellants who are co-sharer landlords had brought a suit for their share of the rent, obtained a decree, and in execution sold the land which they bought in themselves. It has been held by the learned Subordinate Judge in the Court below that the question of transferability does not arise.

2. The only point that arises in this appeal is whether that decision is or is not right. The case appears to be exactly similar to that of Haro Chandra Fodder v. Umesh Chandra Bhattacherjee 14 C.W.N. 71 (1909). The only difference is that the co-sharer landlords in that case purchased the holding in execution of a money decree and in the present case they have purchased in execution of a decree for their own share of the rent. But this makes no difference. Before the amendment of the Bengal Tenancy Act a decree obtained by a co-sharer landlord re: his share of the rent was simply a money decree. Consequently the two cases seem to be wholly indistinguishable. The learned pleader for the Appellant has criticized the correctness of the learned Sub-ordinate Judge''s decision. But his criticisms apply in exactly equal measure to the case I have cited and to the case now before me. I am bound by that former decision and must follow it.

3. I may say that the learned pleader for the Appellant asked for time on the ground that the 12th Defendant who is on the record as a minor represented by his mother had come of age and also on the ground that his mother had sold the minor''s interest in the property to a certain other person who is not a party to the case, and

who ought to be brought on the record. No formal application has been put in nor has any affidavit been filed. The suit was instituted in September 1907, and I think it is too late now to delay the proceeding on a mere verbal application of this nature. The learned pleader for the Respondent is content to take his chance with regard to this question of parties, and agrees that the appeal should be dismissed on the record as it stands. Accordingly the appeal is dismissed with costs. The appeal is dismissed. We make no order as to costs.