

Dwarka Nath and ors. Vs. Alope Chunder Seal and ors.

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Court : Kolkata

Decided On : Jan-09-1883

Reported in : (1883)ILR9Cal641

Judge : Maclean and ;O'Kinealy, JJ.

Appellant : Dwarka Nath and ors.

Respondent : Alope Chunder Seal and ors.

Judgement :

Maclean, J.

1. In this case the question to be decided is whether the sale, on the basis of which the plaintiffs sue as purchasers, passed the tenure or only the right, title and interest of the judgment-debtors. It appears that in 1870, the plaintiffs' mother brought a suit for arrears of rent of a howla for the years 1274,1275 and 1276, and obtained a decree on the 19th July. In execution of that decree, the property, on account of which the suit for arrears had been brought, was sold. What was sold is the present dispute. It is contended on behalf of the plaintiffs that since the certificate purports to have been issued under Sections 59 and 60 of the Rent Act and the Court admittedly had no power to sell under that Act anything but the tenure itself, there arises an irrebuttable presumption in favour of the tenure being sold. But when we turn to the notification, under which the sale is declared to have taken place, and the sale certificate, we find that they contain a clear and precise

statement showing that what was proclaimed for sale and what was actually sold was not the tenure, but the right, title and interest of the defendants. This too appears to be consonant with the fact that the decree-holders purchased the property for a very small sum. Following the decisions of a Division Bench of this Court, in special appeal No. 2752 of 1875, we are of opinion that the declaratory portion of a proclamation is not by itself sufficient to override the description of the property in the body of the document, and that it is not the tenure, but the right, title and interest of the judgment-debtor that was sold in the former suit and purchased. In this view of the case, we uphold the decision of the Subordinate Judge and dismiss the appeal with costs.

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