

Abed Mollah Vs. Diljan Mollah

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Court : Kolkata

Decided On : May-28-1902

Reported in : (1902)ILR29Cal459

Judge : Pratt and ;Geidt, JJ.

Appellant : Abed Mollah

Respondent : Diljan Mollah

Judgement :

Pratt and Geidt, JJ.

1. In this case what is described as the jama of the judgment-debtor was advertized for sale. By this we understand that what was put up for sale was the jote or holding of a raiyat.
2. An under-tenant or sub-raiyat of the judgment-debtor applied under Section 310A of the Code of Civil Procedure and was permitted to pay in the decretal amount, etc., as provided by that section.
3. The question before us in this rule is whether the lower Court had jurisdiction to allow the deposit and to set aside the sale.
4. In the Full Bench case of Paresh Nath Bingha v. Nabogopal Chattopadhyaya (1) the question for decision was whether a mortgagee can come in under Section

310A; and it was held that he could. The Full Bench did not decide, nor was it the case before them, that an under-raiyat could come in under that section. In the unreported case of Wazaddm v. Nur Bux, which was referred to this Court under Section 617, Civil Procedure Code, and which reference was decided on the 13th of March 1901, it was held that where a superior tenure had been sold, the howladar under the tenure-holder is not a person whose immoveable property has been sold within the meaning of Section 310A, Civil Procedure Code.

5. The learned pleader for the opposite party in this case contends that the word jama may be applicable to a tenure-holder. If that be so, then the case just cited is a direst authority against his contention that a person holding under a tenure-holder can have the sale set aside. We think, however, that it is the case of a deposit being made by an under-raiyat, and that the reasons given in the case just cited are equally applicable in a case like the present. In the case of Bepin Behary Sarnokar v. Kali Das Chatterjee (1), which' was a case in which the deposit had been made under Section 310A by an under-tenant of non-agricultural land, the learned Judges observed: 'It would seem, to say the least, extremely doubtful whether the applicant would have any status to pay in the amount of the decree under Section 310A.' That observation was not necessary for the purposes of that case, still we consider that the opinion so expressed is entitled to due weight. That opinion is in accord with what we think is a right construction of the law.

6. We accordingly make the rule absolute with costs, and direct that the order setting aside the sale be set aside.