

MenajuddIn and anr. Vs. HeronuddIn Mullick and ors.

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Court : Kolkata

Decided On : May-28-1946

Reported in : AIR1947Cal137

Appellant : MenajuddIn and anr.

Respondent : HeronuddIn Mullick and ors.

Judgement :

B.K. Mukherjea, J.

1. This appeal is on behalf of the defendants in a rent suit. To appreciate the controversy between the parties, it would be necessary to state a few facts. The lands in suit, in respect of which rent has been claimed by the plaintiffs appertain to a nim howla which is recorded in khatian No. 74 and belonged originally to one Muhammad Selim Khalifa. After Muhammad Selim's death, it devolved upon Abdul Hanif Khalifa and others. The rent of the nim howla having fallen into arrears, the superior landlord instituted a rent suit against the tenure holders and obtained a rent decree on 31-1-1936. The decree was put into execution on 28-3-1936, and a sale was held on 11-8-1936, the purchaser being one Habibur Rahman. After the execution case was started, and before the sale took place, the tenure was put up to sale in execution of a mortgage decree obtained by a mortgagee decree-holder against the tenants, and it was purchased by the present plaintiffs on 2-5-1936. The mortgage sale was confirmed on 22-7-1936. The plaintiffs have on the basis

of their purchase at the mortgage sale brought this suit for recovery of rents against the tenants who are in possession of the disputed lands under the owners of the *nim howla*.

2. The defence was that the plaintiffs did not obtain any title by virtue of their purchase at the mortgage sale inasmuch as the sale in execution of the rent decree passed the tenure itself to the auction purchaser Habibur Rahman who got it free and clear of any body else's interest. The trial Court gave effect to this contention of the defendants and dismissed the plaintiffs' suit. On appeal, the judgment was reversed and the learned District Judge of Bakargunge who heard the appeal decreed the plaintiffs' suit, being of opinion that the plaintiffs not being made parties to the proceedings in execution of the rent decree, the sale had not the effect of a rent sale under chap. XIV, Bengal Tenancy Act. It is the propriety of this decision that has been challenged before us by Mr. Jitendra Nath Guha who appears in support of the present second appeal to this Court.

3. It seems to us on hearing the learned Advocates on both sides, that the view taken by the Court of appeal below is right. The decision of a Special Bench of this Court in *Krishnapada Chatterjee v. Manadasundari* : AIR1932 Cal321 , which was based on the pronouncement of the Judicial Committee of the Privy Council in *Forbes v. Bahadur Singh* ('14) 1 A.I.R. 1914 P.C. 111 (114), is that the right to bring a tenure or holding to sale under Section 65, Bengal Tenancy Act, exists so long as the relationship of landlord and tenant subsists between the parties and consequently if the relationship does not exist at the date of the sale, it would not have the effect of rent sale under chap, xiv, Bengal Tenancy Act. This was a case where the landlord ceased to be the landlord after obtaining his decree, but before putting the tenure to sale, but the same principle has been applied to cases where the tenant's interest ceases before the date of the sale, and it has been held that in such cases also the interest of the transferee who was not made a party to the execution proceeding did not pass by the sale which had not the effect of a sale under chap. XIV, Bengal Tenancy Act. Vide *Binapani Debi v. Banku Behari Mondal* : AIR1943 Cal475 . In our opinion, the principle enunciated in this case applies to the facts of the present one, and consequently it must be held that the plaintiffs' title remained unaffected by the sale in execution of the rent decree.

4. Mr. Jitendra Nath Guha has challenged the propriety of the decision in : AIR1943 Cal475 referred to above on the ground that the learned Judges in deciding this case did not advert to or consider the effect of Sub-section (2) of Section 146A, Bengal Tenancy Act. In our opinion, that contention really is of no substance. Section 146A contemplates a case where there are more than one tenant on the land, and Sub-section (2) provides that even if some of the cosharer tenants are left out in a rent suit, but still if the defendants to the suit represented the entire body of the cosharer tenants, the decree would have the effect of a rent decree and the sale would have the same consequences as the sale of a holding or tenure under chap, XIV, Bengal Tenancy Act. The decree would not cease to be a rent decree by reason of the fact that all the tenants were not impleaded as parties defendants to the rent suit, nor, on the other hand the sale would cease to have the effect of a rent sale by reason of all the tenants not being proceeded against as judgment-debtors in the execution proceedings. But if for any other, reason other than the non-joinder of all the tenants as parties defendants to suit, the decree cannot have the effect of a rent decree, or the sale in execution of that decree cannot operate, as a sale of the holding or tenure as contemplated by chap. XIV, Ben. Ten. Act, Section 146A, Ben. Ten. Act, has got absolutely no bearing on the question. This has got to be decided on the other provisions of law laid down in the Bengal Tenancy Act. If under Section 65, Ben. Ten. Act, it is necessary that the relationship of landlord and tenant must continue down to the date of the sale in order that the holding or tenure may pass to the transferee, that position, in our opinion, is not in any way affected by Section 146-A. In our opinion, therefore, the decision of Blank and Biswas, JJ. in : AIR1943 Cal475 is perfectly sound, and the ground put forward by Mr. Jitendra Nath Guha would fail.

5. Mr. Jitendra Nath Guha has further argued that in the present case it was not possible for the landlords to make the plaintiffs parties to the execution proceeding inasmuch as they were not aware of the purchase at the mortgage sale. It appears that there is oral evidence on the record which is practically one-sided and which goes to show that the landlords had knowledge. Quite apart from that, as the sale was in execution of a mortgage decree, notices would be served upon the landlords under the provisions of Section 13, Ben. Ten. Act. The presumption in law would be that such notices were served. It was certainly open to the landlords

to rebut that presumption by showing that no notice was served upon them or even if it was served at all, it was served after the rent sale took place, but no such evidence was adduced by the defendants to this suit, and consequently we are unable to say that the landlords had no knowledge of the plaintiffs' purchase. The result, therefore, is that we dismiss this appeal, but make no order as to costs in this Court.

Sharpe, J.

I agree.

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