

Rahimuddi Vs. Chadam and ors.

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Court : Kolkata

Decided On : May-25-1928

Reported in : AIR1928Cal768,117Ind.Cas.686

Appellant : Rahimuddi

Respondent : Chadam and ors.

Judgement :

1. This is an appeal by defendant 1 in a suit which was for a declaration of the plaintiff's title as an occupancy raiyat to certain land and for recovery of possession. The superior interest of the occupancy holding is held at present by defendant 1 who acquired it from his wife some time in the month, of May 1923. Defendant 2, the wife of defendant 1, purchased that interest from the previous holder, Hari Mohan, by a conveyance dated 23rd October 1922. One Kuti Molla was the raiyat in occupation of the land at the time of the purchase of the superior interest by defendant 2. Kuti Molla having defaulted in the payment of rent Hari Mohan had instituted against him a suit for arrears' of rent and had obtained a decree. This, decree was put into execution by Hari Mohan after the date of the sale of the superior interest to defendant 2 and in execution of the decree Hari Mohan had caused the tenancy to be brought to sale on the 25th April 1923, The plaintiff was the purchaser at that sale. When defendant 2 purchased Hari Mohan's interest her husband, defendant 1, dispossessed Kuti Molla and took khas possession of the land. The plaintiff, after his purchase, finding that he could not obtain possession brought the suit out of which this appeal arises. Both the Courts

below have decreed the suit, and hence this appeal.

2. The question which arose was whether or not the sale at which the plaintiff purchased the land was one governed by the provisions of Ch. 14, Ben. Ten. Act. The learned lower appellate Court following the decision in the case of Manindra Nath Ghose v. Asutosh Ghose [1917] 25 C.L.J. 626 held that, as Hari Mohan had been the landlord at the date of the decree, the fact that he was no longer the landlord at the date of the execution, of that decree did not affect the application of the provisions of Ch. 14. This finding of the lower appellate Court has been assailed here. The law on the subject of the right of decree-holders to sell tenancies with all the privileges attached to sales under the provisions of Ch. 14, Ben. Ten. Act, is laid down in the ruling of the Judicial Committee in the case of Forbes v. Maharaj Bahadur Singh A.I.R. 1914 P.C. Their Lordships have laid down there that in order to attract the provisions of that chapter it is necessary that the decree-holder should hold the position of a landlord not merely at the time of the decree but also at the time of the application for execution. This decision is binding upon us and it is not open to us to hold any other view with regard to the law on the subject. We must take it that the decision in the case of Manindra Nath Ghose v. Ashutosh Ghose [1917] 25 C.L.J. 626 was on the particular facts of that particular case. The effect, therefore, according to our finding, of the sale by Hari Mohan of Kuti Molla's interest was to transfer not the tenancy as a tenancy but merely the right, title and interest which Kuti Molla had had. Such being the case, it would have been necessary for the plaintiff in order to succeed to establish that the rights that Kuti Molla had held was transferable. No attempt having been made to prove this transferable right the plaintiff is not entitled to succeed.

3. The result is that the appeal is allowed, the decrees of the Courts below are set aside and the plaintiff's suit dismissed with costs in all Courts.