

Sailabala Debi and ors. Vs. Nritya Gopal Sen Poddar and ors.

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Court : Kolkata

Decided On : Dec-03-1915

Reported in : 31Ind.Cas.859

Judge : Richardson and ;Roe, JJ.

Appellant : Sailabala Debi and ors.

Respondent : Nritya Gopal Sen Poddar and ors.

Judgement :

1. This is a Rule calling upon the opposite party to show cause why the order of the District Judge of Dacca, dated the 18th May 1914, should not be set aside. The matter arises out of the sale of a holding at the instance of the landlords in execution of a decree for arrears of rent. The holding had previously been sold by a mortgagee of the original tenant in execution of a decree on the mortgage and purchased by the mortgagee for the sum of Rs. 400. At the sale at the landlord's instance, the holding was purchased by the landlords for the sum of Rs. 38 only. The mortgagee then applied Under Order XXI, Rule 90, Civil Procedure Code, to have the sale set aside on the ground of material irregularity and fraud in conducting the sale. The Court of first instance held that the mortgagee had no locus standi to make such an application and, for that and other reasons, dismissed the application. On appeal, the learned District Judge held, on the contrary, that the mortgagee was entitled to make the application and, on the merits, he set aside the sale. We are asked to set aside the order of the District

Judge on the ground that he had no jurisdiction to make it, the mortgagee not being a person entitled to apply under the rule referred to. It should be mentioned that the sale in both instances was the sale of an entire holding. The question at issue depends on the meaning to be attached to the words 'whose interests are affected by the sale' in Order XXI, Rule 90. Our attention was invited by the learned Pleader for the petitioners (the landlords) to the ruling of this Court in the case of Abdul Rahman Sarkar v. Promode Behary Dutta 28 Ind. Cas. 182 : 22 C.L.J. 108 : 20 C.W.N. 40. In that case, it was held (the case arose in Eastern Bengal) that the purchaser in execution of a mortgage-decree of an entire non-transferable occupancy holding was not competent to apply under Order XXI, Rule 89, Civil Procedure Code, to set aside under that rule a subsequent execution sale held in execution of a rent-decree in which the landlord himself had purchased the property. The language of Rule 89 is, however, not the same as the language of Rule 90. The words of Rule 90 'whose interests are affected by the sale are very wide and, in our opinion, it is impossible to say that the mortgagee in the present case does not come within the rule. Par one thing, he is interested in the sale-proceeds and, is clearly entitled to any balance of the sale-proceeds remaining over after the landlord's dues have been satisfied. It seems to us that his interests were clearly affected by the sale which he seeks to have set aside and that the view adopted by the learned District Judge is correct. That being so, the Rule must be discharged with costs. We assess the hearing fee at two gold mohurs.