

**Devi Sankar Banerjee Vs. Janendra Narayan Bagchi and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/879366](http://sooperkanoon.com/879366)

**Court :** Kolkata

**Decided On :** Jul-23-1937

**Reported in :** AIR1939Cal110

**Appellant :** Devi Sankar Banerjee

**Respondent :** Janendra Narayan Bagchi and ors.

**Judgement :**

Costello, Ag.C.J.

1. The rule which we are now considering was issued as long ago as 3rd August 1936. It is directed against two orders made by the District Judge of Birbhum dated respectively 16th July 1936 and 30th July 1936. The matter came before the learned Judge in these circumstances. The present petitioner Debi Sankar Banerjee had purchased Dihi Baidora and certain other mehals appertaining to Touzi No. 1152/1 of the Birbhum Collectorate in Astham proceedings No. 15 and 72/93 of 1936-37 on 23rd May 1936 for Rs. 27,100 and he had obtained from the Collector a certificate vouching for the fact that he had made full payment of the purchase money. The subject-matter of the purchase was a patni taluk, and in the patni potta there was a covenant which as translated, reads as follows:

If you create a darpatni, you must do so at the jama mentioned in the kobala and inform me at once. You must not create it at a lesser jama and if you do so, it shall be void.

2. The patnidars against whom the sale had taken place let out the mouzas comprised in the patni by creating some 18 darpatni pottas. The purchaser in due course applied to the zamindar in order to procure a transfer into his own name in the Cutchery of the patni rights upon his furnishing security to the extent of half the jama or annual rent, and he had obtained what is described as the usual amaldastak, that is to say an order for possession, together with notice directed to the raiyats and other persons concerned, to attend and thenceforward to pay their rents to Debi Sankar Banerjee as the purchaser at the auction sale of the patni. Subsequently, Debi Sankar Banerjee proclaimed in all the mouzahs in question, that is to say the mouzahs which comprised the patni, that he annulled all under tenures created by the outgoing patnidars, and that he had taken possession of the mahal. Certain of the patnidars, however, attempted to offer some opposition and to interfere with the collection of rents which was being made by the purchaser, and it is said that they were endeavoring to induce the raiyats not to pay rent to the purchaser and so creating difficulties in the way of the collection of rents, in particular as regards the mouza which was known as Dihi Baidora. Thereupon the petitioner applied to the District Judge, Birbhum, under the provisions of Section 15 of the Patni Regulations (8 of 1819) asking for the issue under the seal of the Court and the signature of the Judge, of a proclamation declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zamindar, acquired the entire rights and privileges attaching to the tenure of the previous patnidar in the state in which it was originally derived by him from the zamindar, he alone would be recognized as entitled to make the zamindari collections in the mufassal, and that no payments made to any other individual would on any account be credited to the raiyats or others in any suit for rent or on any other occasion whatever. I am using the precise words of the Section itself. The object, of course, of endeavoring to obtain such a proclamation was to avoid any further difficulties as regards the collection of the rents and to avoid any breach of the peace. The application was made to the District Judge, Birbhum, on 13th July 1936, and on that date the learned Judge recorded an order in these terms:

The petitioner has prayed for issue for a proclamation under Section 15, Clause 2 of the Putni Sale Jaw. Heard petitioner's pleader. Orders reserved.

3. On the next day, the darpatnidars, or some of them, appeared in the Court of the District Judge of Birbhum and asked for time to file objections to the application which was being made by Debi Sankar Banerjee. His pleader contended however that these darpatnidars had no locus standi to appear at all, and so the learned Judge upon the request of the pleader for the darpatnidars, adjourned the matter until the day following for argument. The matter duly came on for hearing on 15th July 1936. The darpatnidars filed their objection arguments were heard and the learned Judge then reserved the judgment until the following day. The case put forward by the darpatnidars was that their darpatnis had been created by the patnidars. under the power given to them by the clause in the patni potta to which I have referred. They said that that clause was sufficient to give to the patnidars express authority to grant darpatnis. They, accordingly, contended that Debi Sankar Banerjes as the purchaser was not entitled to have a proclamation issued in accordance with the application he had made. On the other hand it was contended, on behalf of Debi Sankar Banerjee, that the darpatnidars, had no right to appear in the proceedings at all or to resist his application, because the proceedings were only of a summary nature and the purchaser had received the amaldastak from the zamindar, an amaldastak entitling him to go into possession. It was contended before the learned Judge, and it has been contended before us, that in the circumstances the Court had no option whatever in the matter; that in effect the provisions of Clause 2 of Section 15 of the Patni Regulation was mandatory, and so the Court was bound to issue the proclamation asked for.

4. The learned Judge has pointed out however that under the terms of Section 15, Clause 2 the purchaser is only entitled to the aid of public officers for obtaining possession of 'his just rights'. The learned Judge said that, in his opinion, the expression 'just rights' could have no other meaning than 'rights to which the purchaser was entitled; either by law or in equity' and, accordingly, if the Court is of opinion upon summary enquiry that the rights claimed by the purchaser are not just, then the Courts not bound to issue the proclamation asked for. In that view of the matter the learned Judge said that the darpatnidars were entitled to come in and show that the rights claimed by the purchaser were not just rights, and that the Court was entitled to decide questions raised between the parties by a summary

inquiry. The learned Judge took the view that that seemed to be a reasonable and equitable construction to put upon Clause 2 of Section 15 of the Patni Regulation taken in conjunction with the provisions of Section 11. Section 11 so far as is material says this (I refer to the second part of the Section):

In like manner, on sale of a taluk for arrears all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land, and to collect the rents of the raiyats, this having been enjoyed merely in the consequence of the defaulter's assignment of a certain portion of his own interest the whole of which was liable for the rent.

5. The important part of that paragraph consists of these words : 'Except the authority to grant them should have been specially transferred....' It was contended here that the covenant in the patni potta which I have read did have the effect of transferring the authority to the patnidars to grant leases; in other words, to create darpatnis. Mr. Bose has argued that the learned Judge had no right and no jurisdiction to consider any of the matters raised by the darpatnidars of mouza Dihi Baidora or any other darpatnidars holding under the patnidars whose tenures had been sold. We think that to hold anything of the kind would be most unreasonable, because it seems to us to be quite clear that there is a duty cast upon the Judge before whom an application was made under Section 15, Clause 2 to consider and determine, at any rate in a summary fashion, whether the circumstances are such that the purchaser can justly have a proclamation issued in his favour. We are of opinion that it cannot be said that the learned Judge either exceeded his jurisdiction or exercised his jurisdiction illegally or irregularly and consequently Section 115, Civil P.C., is of no assistance to the petitioner. The rule must be discharged with costs two gold mohurs. It must not be taken however that anything we have said precludes Debi Sankar Banerjee from agitating in proper proceedings the question of whether or not he is entitled to annul or disregard the leases or darpatnis created by the patnidars whose interests he has purchased.

**Edgley, J.**

6. I agree.

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