

Durlav Prodhania and anr. Vs. Mahammad Mainaddi Bepari, and ors.

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Court : Kolkata

Decided On : Jan-28-1909

Reported in : 1Ind.Cas.279

Judge : Sharfuddin and ;Coxe, JJ.

Appellant : Durlav Prodhania and anr.

Respondent : Mahammad Mainaddi Bepari, and ors.

Judgement :

1. In this case, the Subordinate Judge of Tipperah has set aside a sale in execution of a rent decree on the ground that the auction-purchaser is the benamidar of the judgment-debtor. The auction-purchaser appeals.

2. A preliminary objection is taken that no second appeal lies, the order having been passed under Section 173 of the Bengal Tenancy Act. This point appears to be concluded by the authority of the cases cited in Mr. Rampini's Commentary of the Bengal. Tenancy Act, under Section 173.

3. It is argued on the authority of the case of Chand Monee Dasya v. Santo Monee Dasya 24 C. 707, that a second appeal lies in this case. We find, however, that in that case the second appellant to the High Court was one of the judgment-debtors, who had asked that the sale should be set aside on the ground that the purchaser was a benamidar of one of his fellow--judgment-debtors. It may well be that Section 234 of the former C.P.C. gave a judgment-debtor or a decree-holder a

right of appeal against an order under Section 173, but this case is no authority for holding that an auction-purchaser has a similar right.

4. The cases cited establish that an auction-purchaser has no right of appeal against an order passed under Section 173 of the Bengal Tenancy Act. This appeal must, accordingly, be dismissed with costs.

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