

(1943) 11 CAL CK 0003
In the Calcutta High Court

Abdur Rasheed

APPELLANT

Vs

Maharaja Srish Chandra

RESPONDENT

Date of Decision : 25-11-1943

Acts Referred:

Bengal Tenancy Act, 1885 — Section 168A
Court of Wards Act — Section 10C

Citation : AIR 1944 Cal 301

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—These appeals are by the decreeholder. The judgment-debtor's estate is in the charge of the Court of Wards, and it is rather extraordinary to find them trying to dodge out of payment of rent. The question involved is the meaning of the word "entire" in Section 168A, Bengal Tenancy Act. The facts are these. The decrees are for rent due on a certain patni. The interest of the respondent is eight annas, the remaining eight annas belonging to a third person. When the appellant attempted to execute the decrees the respondent successfully defeated him by Section 10C, Court of Wards Act. He accordingly proceeded against the other judgment-debtor alone and put his share of the patni up to sale. Section 10C no longer affords any help to the respondent and the appellant is attempting to sell his share in the patni. The objection depends upon putting stress upon the word "entire" and the contention of the respondent was that the only way of realizing the amount is by putting up the whole patni to sale. On a previous occasion I have held that there is no substance in this objection. Nothing which has transpired now would induce me to alter that opinion. Section 168A is obviously made to help tenants and not landlords. The use of the word "entire" shows the limits which are placed upon the right of the decree-holder. To hold that although the decree can be satisfied by the sale of a small portion of the holding, the decree-holder against his own wishes and in spite of the protest of the judgment-debtor is compelled to bring the whole tenure to sale, would be to the disadvantage of the tenant. The appeals are

accordingly allowed, the orders of the Court of appeal below are set aside and those of the first Court restored. The respondent