

(1877) 02 AHC CK 0003
In the Allahabad High Court

Ablakh Rai and Others

APPELLANT

Vs

Udit Narain Rai and Another

RESPONDENT

Date of Decision : 19-02-1877

Acts Referred:

Citation : (1875) ILR (All) 353

Hon'ble Judges : Robert Stuart, C.J;Turner, J;Spankie, J;Pearson, J;Oldfield, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Robert Stuart, C.J.—My opinion on the question submitted by this reference is an answer in the affirmative, and that the right of occupancy held by occupancy tenants can be sold by public auction in execution of a decree of the Civil Court. Section 9, of Act XVIII of 1873, after declaring that the rights of tenants at fixed rates shall be heritable and transferable, goes on to provide as follows: "No other right of occupancy shall be transferable by grant, will, or otherwise, except as between persons who have become by inheritance co-sharers in such right." I consider that the words "or otherwise" must be understood to be a general expression controlling the particular words which go before grant will "and to mean" or otherwise by the voluntary act or deed ejusdem generis of the parties," and that they do not mean to exclude a transference of the right by sale in execution of a decree.

2. Our attention at the hearing was directed to Section 171 of the Act. By that section it is provided: "In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any Immovable property belonging to such debtor." If this section should be read in connection with Section 9, the construction I have put on the latter might be said to be strengthened, but it is unnecessary to consider that, as I hold that Section 9 is sufficient for this case, and that whatever else the parties in possession of the

right of occupancy may do as voluntary agents, they cannot prevent a transfer by sale of that right under a decree against them, for in my opinion the right to enforce legal process against property cannot under any circumstances be taken away excepting by express words to that effect.

Pearson, J.

3. Section 9, Act XVIII of 1873, declares that the rights of occupancy tenants other than tenants at fixed rates shall not be transferable by grant, will, or otherwise, except as between persons who have become by inheritance co-sharers in such rights, which, therefore, if sold at auction in execution of a decree of the Civil Court, can only be sold to such persons, but subject to that restriction may thus be sold.

Turner, Spankie and Oldfield, JJ.

4. We see no reason to think that the Legislature intended to restrict the provision of the second paragraph of Section 9 of the Rent Act to voluntary transfers only. The first paragraph declares generally that the rights of tenants at fixed rates shall from the date of the passing of the Act be heritable and transferable. In, as we read them, equally general terms the second paragraph declares that no other right of occupancy shall be transferable by grant, will, or otherwise, except as between persons who have become by inheritance co-sharers in such rights. The term "otherwise" is strictly equivalent to the term in any other way, and must, we think, include all transfers, whether voluntary or involuntary. It follows that rights of occupancy other than at fixed rates are not transferable by auction sale in execution of decree to strangers, but may be transferred by such sale to any of the persons in whose favour the exception is specially declared.