
(1934) 05 CAL CK 0035
In the Calcutta High Court

Ananda Charan De

APPELLANT

Vs

Mahalakshmi De and Others

RESPONDENT

Date of Decision : 04-05-1934

Acts Referred:

Bengal Tenancy Act, 1885 — Section 26F

Citation : AIR 1934 Cal 795

Hon'ble Judges : M.C. Ghose, J

Bench : Division Bench

Judgement

M.C. Ghose, J.—This is a petition by the judgment-debtor. The facts are that in execution of a money decree of 1930 the petitioner's property now in suit was sold in auction on 26th January 1931 and purchased by opposite party No. 6. Thereafter on 16th March 1932 the petitioner filed an application under Order 21, Rule 90, Civil P. C, to set aside the sale. Meantime opposite parties Nos. 1 to 4 who are co-sharer landlords in respect of the property applied u/s 26-F, Ben. Ten. Act, for pre-emption. While that petition of pre-emption was pending on 23rd May 1932, the decree-holder the auction purchaser and the judgment-debtor together filed a petition of compromise by which they agreed that the sale should be set aside. The Court passed the following order:

The petition of compromise filed by both parties be kept on the record and put upon the date fixed for necessary orders. Thereafter on the prayer of the opposite parties they were made parties to the sale set aside case and the matter was contested between the judgment-debtor and them.

2. In the result the Munsif found on the (evidence that the sale had been brought about by the fraudulent suppression of the sale process and thereby the judgment-debtor had suffered substantial loss. He set aside the sale. In appeal the learned Subordinate Judge has come to the conclusion that the petition of the judgment-debtor was barred by limitation. In that view he has reversed the finding of the Munsif and confirmed the sale. In this Court it is urged by the learned Advocate for the petitioner that the learned Subordinate Judge

committed an error in his finding on limitation by relying upon a statement of a witness in the cross-examination which was made to him in a puzzle. I am of opinion that the finding of fact of the Court of appeal below is not liable to be set aside by this Court in revision.

3. It was strenuously contended that as the decree-holder and the auction-purchaser agreed with the judgment-debtor to set aside the sale the Court had no jurisdiction to allow the landlords to be made parties in order to contest the petitioner's application to set aside the sale. The Munsif held that the landlords having received notice of the transfer and having filed the petition u/s 26-F, Ben. Ten. Act for pre-emption had an interest in the matter and under Order 1, Rule 10, Civil P. C, it cannot be said that his action was illegal. The matter was not argued in the Court of appeal below at all. An unreported case decided by Sir C. C. Ghose, J., on 3rd September 1931 has been quoted in support of the contention that the landlords had no jurisdiction to oppose the petition to set aside the sale. I have perused that judgment. In that case the sale was actually set aside by the Munsif and thereafter he refused to consider the petition of the landlords for pre-emption. In the present case the sale was not set aside by the Munsif. He kept the petition pending and heard the opposition of the landlord. There is, in my opinion, no error of law or procedure in this matter. In the result the Rule is discharged with costs?hearing fee is assessed at one gold mohur.