

(1915) 05 CAL CK 0023
In the Calcutta High Court

Annoda Charan Naya and Another

APPELLANT

Vs

Dasarath Haldar and Others

RESPONDENT

Date of Decision : 07-05-1915

Acts Referred:

Citation : 40 Ind. Cas. 444

Hon'ble Judges : Smither, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This an appeal from a decision of the learned District Judge of the 24-Perganas, dated the 9th April 1915, affirming the decision of the Subordinate Judge at Alipur. The plaintiffs were three in number. They brought a suit to recover possession of certain land. The plaintiffs Nos. 2 and 3 were the original tenants of the property, the 1st defendant being the landlord. Certain rents having fallen due by the plaintiffs Nos. 2 and 3 to the landlord, the defendant No. 1, a suit for rent was instituted and an ex parte decree was obtained on the 10th July 1900. The property was then attached and brought to sale and purchased by the defendant No. 1. The sale was confirmed on the 15th August 1900. On the 2nd June 1902, the plaintiffs Nos. 2 and 3 sold their interest to the plaintiff No. 1 and immediately executed a kabuliyat in favour of the plaintiff No. 1. On the 18th May 1905 the defendants Nos. 2 and 3 took a lease of the property from the defendant No. 1. On the 26th May 1905 the plaintiffs Nos. 2 and 3 applied to set aside the decree and the sale in execution. On the 18th July 1905, the decree was set aside and the gale fell with it. The first point that has been urged before us, as it was urged in the lower Appellate Court, is that the plaintiffs Nos. 1, 2 and 3 have no title to the land as the plaintiff No. 1 claims through the plaintiffs Nos. 2 and 3 who, on the terms of the lease, had no right to transfer the land. This case depends purely on the terms of the lease, because Mr. Ghose on behalf of the appellants has quite frankly admitted that apart from the terms of the lease the plaintiffs Nos. 2 and 3 would have a right to transfer their interest in the land.. That being so, there is not very much to say, because if the plaintiff No. 1 has not got a valid transfer the property has vested in the plaintiffs" Nos. 2

and 3 and vice versa. The question of this conveyance may not be so easy, but it seems to me clear that the transfer at any rate had been recognised for some purposes by the landlord before a quarter of the purchase-money had been paid to him. In fact from the very nature of the conveyance, there could not be a quarter of the purchase-money paid to the landlord until there was a transfer and sale to the purchaser because the purchaser was not likely to part with a quarter or the Whole of the purchase-money before he had got a proper document executed to him for the transfer of the land. That seems to me to be one answer. The other answer is that in a case of this sort where there is no condition of forfeiture in the lease, a covenant like this cannot restrain the transfer of an interest unless proper conditions are put in for enforcing the rights of the landlord on a breach of the contract. I think the conclusion arrived at by the learned Judge of the lower Appellate Court that this property has vested in the plaintiffs is clearly right.

2. The other point of limitation is clearly covered by the decision which Mr. Ghose has been good enough to refer to, namely, the decision reported as Budhu Kumar v. Hafiz Hussain 20 Ind. Cas. 821 : 18 C.L.J. 274. The appeal is, accordingly, dismissed with costs.

Smither, J.

3. I agree.