

(1942) 04 CAL CK 0012
In the Calcutta High Court

Atul Chandra Chakravarti and Others

APPELLANT

Vs

Upendra Narayan Mukhopadhyaya

RESPONDENT

Date of Decision : 23-04-1942

Acts Referred:

Bengal Tenancy Act, 1885 — Section 168A

Citation : AIR 1942 Cal 478

Judgement

1. This is an appeal on behalf of the judgment-debtors and it is directed against an order made by the Subordinate Judge, Second Court, Midnapore, dated 7th March 1941, rejecting an application of the appellants u/s 168A, Clause (2), Ben. Ten. Act. The material facts are not disputed and may be shortly stated as follows : The respondent decree-holder obtained a rent decree against the appellants for a sum of Rs. 12,626 odd annas on 4th January 1932. It was put into execution in Execution Case No. 5 of 1932 and the tenure in arrears was put up to sale and purchased by the decree-Holder on 23rd August 1932. The sale of the tenure wiped off only a portion of the decretal amount and the decree-holder had to take out successive executions after that for realisation of the balance. In Execution Case No. 16 of 1937, several other immovable properties belonging to the judgment-debtors were attached and sold and as that even did not satisfy the entire decree the present application for execution was started on 17th November 1939. In course of the present execution proceedings, the residential house of the judgment-debtors was attached but before the sale took place the new Section 168A, Ben. Ten. Act, came into force and the judgment-debtors made an application under Sub-section (2) of that section for release of the property attached on payment of costs. This application was rejected by the trial Court on the ground that the present case came under the proviso to Section 168A(1)(a), Ben. Ten. Act, and was consequently exempted from the operation of the main provision. It is the propriety of this decision that has been, challenged on behalf of the appellants in this appeal. The view taken by the Court below was that as soon as the landlord purchased the defaulting tenure on 23rd August 1932 the tenure itself ceased to exist being merged in the superior

interest of the landlord, and as the tenancy expired before the present execution proceedings were commenced, by some means, other than surrender by the tenant, the proviso to Section 168A(1)(a) was attracted. Mr. Bose who appears in support of the appeal has contended before us that the proviso has no application except where the tenancy is for a definite period and comes to an end by efflux of time. We do not think that we can accept this contention as sound. The words "term of the tenancy" as used in the proviso are no doubt not very happy but in our opinion they mean the same thing as "tenure or holding" which occur just before them, and there is no justification for interpreting the words in a restricted sense and limiting them to a tenancy for a particular period only. The proviso contemplates the extinction of the tenancy by some method which the law considers valid and the fact that "surrender" is excluded, definitely shows that efflux of the period is not the only mode of extinction which the Legislature contemplates. What the Legislature contemplates is that the tenancy must terminate or cease to exist, and it is not enough that it has merely changed hands and passed on to some person other than the judgment-debtor. In this view we have no doubt that "merger" may be one of the methods by which a tenancy can expire within the meaning of the proviso to Section 168A(1)(a), Ben. Ten. Act. But though we do not agree with Mr. Bose on this point we think that for another reason the present case does not come within the exception embodied in the proviso to Clause (a) of the sub-section. In our opinion the proviso contemplates a case where the defaulting tenure did not exist at the initial stage when the decree was first sought to be executed. It does not apply where the tenure was sold in execution of the very decree, for the balance due under which the subsequent execution case was started.

2. It is conceded by Mr. Chakravarty that if the tenure had been purchased by a stranger in the execution case of 1932 the landlord would have been incapable of proceeding against any other property of the judgment-debtor inasmuch as the defaulting tenure could not in that event be deemed to have ceased to exist. It would be extremely unfair and anomalous if the landlord, if he himself purchased the defaulting tenure in the first execution proceeding, could be allowed to proceed subsequently against other properties of the judgment-debtors although he would have no such right if the purchaser was some other person. In our opinion, the words "before an application is made for execution of such a decree" as used in the proviso refer to the first or initial application for execution and not to the subsequent proceeding which is started by the landlord after the defaulting tenure is purchased by him in execution of the same decree. Mr. Chakravarti argues that this would be a perfectly sound proposition if the tenure itself was sold after the new Section 168A came into force but if it is extended to a case where the tenure was sold under the old law it would amount to giving retrospective operation to the section. It is true that the rights of the litigants are to be governed by the law as it existed at the date when the suit or proceeding was commenced unless the Legislature alters the rights of parties in express terms. The language of Sub-section (2) of Section 168A is however perfectly

clear and goes to show that pending proceedings are not outside the scope of the section. If the sale of any property other than the defaulting tenure was completed before the section came into force the sale would certainly stand but if the property was attached and not sold, the judgment-debtor is given the right to apply for release of the property on payment of costs. The words of the sub-section are wide enough to include a case where the landlord having put up to sale the defaulting tenure before the section is introduced proceeds against other properties of the judgment-debtor which are attached but not sold when the section comes into force. Such cases would, in our opinion, be governed by Sub-section (1), Clause (a) and the expression "shall not be executed" occurring in that clause would impose limitations upon all proceedings in execution commenced or continued after the new section comes into force.

3. When the landlord is himself the purchaser there is not much difference as to whether the defaulting tenure was sold under the old Act or the new. Even in a case of sale after the new Act the provision of Clause (b) of Sub-section (1) would mean no real benefit to the landlord and he would have to take the tenancy in full satisfaction of his dues though the sale proceeds fell far short of the decretal amount. A case of hardship may indeed arise when the purchaser is a stranger. In such a case the landlord would lose the benefit of Clause (b) of Sub-section (1) and at the same time would be incapable of proceeding against other properties of the judgment-debtor. This may, however, be a matter for the Legislature to consider. We, on our part will not be justified on this ground alone in departing from the plain and literal interpretation of the words used in the section. The result is that we hold that the properties of the judgment-debtors which are under attachment should be released u/s 168A(2), Ben. Ten. Act. The appeal is accordingly allowed and the order of the lower Court is set aside. We make no order as to costs in this appeal.