
(1899) 02 CAL CK 0008
In the Calcutta High Court

Babar Ali

APPELLANT

Vs

Krishnamanini Dassi and Another

RESPONDENT

Date of Decision : 07-02-1899

Acts Referred:

Bengal Tenancy Act, 1885 — Section 13

Citation : (1899) ILR (Cal) 607

Hon'ble Judges : Rampini, J;Hill, J

Bench : Division Bench

Judgement

Hill and Rampini, JJ.—The suit out of which this appeal arises was brought by the plaintiff, the holder of a darputni tenure against a seputnidar for arrears of rent for the period between Kartik 1302 and Jaista 1303 B.S. (October 1895 to May 1896).

2. It appears that in execution of a decree other than a decree for arrears of rent the seputni tenure had been put up for sale on the 9th December 1895 and purchased by one Babu Ram Mitter. That sale was confirmed on the 16th January 1896, but the purchaser did not, before the confirmation of the sale, pay into Court, as required by Section 13 of the Bengal Tenancy Act, either the landlord's fee or the fee for service of notice of the sale on the landlord, nor has either of these fees been since paid.

3. The defendant's answer to the suit was that under the sale of the 9th December 1895 her interest in the tenure had passed to Babu Ram Mitter, and that she was therefore not liable for any rent which became due after that date. As to the period prior to that date she pleaded payment. But it is only with the former branch of her answer that we are now concerned.

4. Upon that question both the Courts below agreed in holding that the confirmation of the sale to Babu Ram Mitter effectually extinguished the defendant's interest in the tenure, and they accordingly dismissed the suit, in so far as it related to the rent for the period subsequent to the confirmation of the

sale. The question, which we have now to decide, is whether they were right or wrong in so doing.

5. Section 13 of the Bengal Tenancy Act, upon which this question turns, provides, so far as it is material, that "when a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect, thereof, the Court shall, before confirming the sale u/s 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlord's, fee prescribed by the last foregoing section, and such further fee for service of notice of the sale on the landlord as may be prescribed." It was argued on behalf of the appellant (the plaintiff in the suit) that the effect of this section is to prohibit the confirmation of a sale unless the prescribed fees have been previously paid into Court. For the respondent it was contended, on the other hand, that the duty is cast on the Court of requiring the purchaser to pay these fees; that an omission on the part of the Court to discharge this duty amounts merely to an irregularity which is cured by the confirmation of the sale; that the language of the section is merely directory; and that this view is supported by a comparison of the language of Section 13 with that of Section 12 in which the duties of a registering officer are laid down.

6. It appears to us that the contention of the appellant must prevail. The sale of permanent tenures of the kind now in question is regulated by the Bengal Tenancy Act, by Section 11 of which the general rule is laid down that every permanent tenure shall, subject to the provisions of the Act, be capable of being transferred in the same manner and to the same extent as other Immovable property. Then follows Section 12, which provides the rules, subject to which a voluntary transfer of a permanent tenure may be made, and Section 13 which provides similarly for the sale of a permanent tenure in execution of a decree other than a decree for rent. The law thus enacted has effected considerable changes in the law relating to the sale of permanent tenures, dispensing as it does with the recognition of the sale by the landlord, as a condition to its validity. And we entertain no doubt that the more unfettered freedom of transfer confirmed by the Act was intended to be exercised, if at all, in strict conformity to the conditions which the Act prescribes, and that unless those conditions are substantially complied with the transfer is invalid and ineffectual.

7. Much stress was laid by the respondents' pleader upon the absence from Section 13 of express words of prohibition.

8. This consideration is, however, to our minds by no means conclusive; a prohibition may be implied although not conveyed in express language, and although the enactment is silent as to the consequences or non-observances of the forms form⁹ which it prescribes. The question is as to the intention of the Legislature, and "where," as it is put by Sir P.H. Maxwell (Maxwell on the Interpretation of Statutes, 3rd edition, p. 518) "the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, no doubt can

be entertained as to the intention." We certainly think that were we to hold that it is a matter of indifference so far as concerns the validity of the transfer whether the fees for which Section 13 provides have or have not been paid prior to the confirmation of the sale, we should be defeating the obvious intention of the Legislature and rendering nugatory the scheme which it thought fit, for reasons which are well understood, to substitute for the previous law on the subject.

9. Nor are we pressed by the consideration upon which reliance was also placed, that there is a change of phraseology in Section 13, as compared with Section 12, in which latter section clear words of prohibition are no doubt employed. That may be accounted for in various ways and does not by any means necessarily imply a change of intention on the part of the Legislature (see Maxwell, p. 452). What we have to look to is the substance of the matter, and we entertain no doubt that the Legislature intended by enacting Section 13 to prohibit the confirmation of a sale such as is contemplated by the section unless prior to the confirmation the purchaser has paid into Court the fees for which the section provides.

10. We are, therefore, of opinion that the sale to Babu Ram Mitter was invalid and ineffectual as a transfer of the tenure from the defendant. This being so, the decree appealed against must be set aside, in so far as it affects the plaintiff's claim for the period subsequent to the 16th January 1896, and the case must be remitted to the Lower Appellate Court to be dealt with by it according to law. Costs to abide the result.