
(1940) 01 PAT CK 0023
In the Patna High Court

Bajnath Ram Marwari

APPELLANT

Vs

Rai Kumar Sinha

RESPONDENT

Date of Decision : 23-01-1940

Acts Referred:

Bihar Tenancy Act, 1885 — Section 177A
Civil Procedure Code, 1908 (CPC) — Section 60(1)(c)

Citation : AIR 1940 Patna 614

Hon'ble Judges : Rowland, J;Agarwala, J

Bench : Full Bench

Judgement

Agarwala, J.—This appeal is by the judgment-debtor from an order of the District Judge of Bhagalpur confirming an order of the Munsif. The appellant carries on business as a money-lender and dealer in grain at Colgong where he has a residential house and two godowns for the storage of grain. Six miles from Colgong he has a holding of 305 bighas in respect of which he is a raiyat. The landlord of this holding obtained a decree for arrears of rent of the holding and in execution of that decree attached the three buildings at Colgong. The judgment-debtor claimed exemption of these buildings from sale in execution u/s 177-A, Bihar Tenancy Act, which was introduced in 1937. The Court below has exempted from attachment the house actually occupied by the judgment. debtor as a residence and has attached only the two godowns. Section 177-A provides that a decree for arrears of rent obtained against a raiyat or an under, raiyat. shall not be executed by the sale of houses and other buildings with the materials and sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment, belonging to the raiyat or under-raiyat and occupied by him.

2. There is a proviso which permits the sale of such houses and buildings in execution of a decree for arrears of rent due in respect of the site of such houses or buildings. The question that arises is what is meant by the words "and occupied by him" in this Section. The new Section is analogous to Section 60(1) (c), Civil P.C., which exempts from attachment and liability to sale in execution of a decree houses and other buildings (with the materials and the sites thereof and

the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him.

3. In *Radhakisan Hakumji v. Balvant Ramji* (1883) 7 Bom 530 the corresponding provision of the CPC of 1882 was under consideration and it was held that the exemption under the Civil Procedure Code

is of a house or building occupied by an agriculturist, and this, we think, means the house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling. It does not include other houses which in one sense may be occupied; what is meant is a physical occupation, by an owner, of his house as a dwelling appropriate or convenient for his calling.

This decision was cited with approval by the Full Bench of the Rangoon High Court in *Bank of Chettinad v. Ko San Ok* AIR (1933) Ran 227 where it was observed that the correctness of the Bombay decision had never been doubted in the High Courts in India. In my view the words "and occupied by him" in Section 177-A, Tenancy Act, mean occupied by the raiyat or under-raiyat as such raiyat or under-raiyat and does not exempt from attachment houses or buildings not occupied by a raiyat or under, raiyat as a dwelling house or for some purpose connected with his vocation as a raiyat or an under raiyat. Consequently I would dismiss this appeal with costs.

Rowland, J.

4. I agree.