

(1926) 05 PAT CK 0030

In the Patna High Court

Balak Singh Bhumij and Others

APPELLANT

Vs

Srikanta Manjhi

RESPONDENT

Date of Decision : 25-05-1926

Acts Referred:

Chota Nagpur Encumbered Estates Act, 1876 — Section 3

Citation : AIR 1926 Patna 524 : 96 Ind. Cas. 587

Hon'ble Judges : Ross, J

Bench : Single Bench

Judgement

Ross, J.—This is an appeal by the plaintiffs in a suit to cancel the sale of a holding in execution of a decree for rent on the ground that it was fraudulent and without jurisdiction, and for confirmation or recovery of possession. The suit was decreed by the Munsif and his decision was affirmed by the Subordinate Judge; but the appeal was remanded by this Court on the ground that there had not been a proper finding on the question of fraud, and the Subordinate Judge has now dismissed the suit.

2. Mr. A.K. Roy on behalf of the appellants, frankly admitting that the finding on the question of fraud was conclusive against him, advanced a new and ingenious argument based upon Section 3 of the Chota Nagpur Encumbered Estates Act, 1876. In order to understand this argument it is necessary to state certain facts.

3. The plaintiffs were the tenants of the zemindar of Barabhum who in 1911, gave a usufructuary mortgage to the zemindar of Dumra, and he, in his turn, in the same year, assigned the mortgage to the Midnapur Zemindary Company, defendant No. 2. The Company brought Rent Suit No. 612 of 1913 against the plaintiffs for rent from 1319 to the 12-annas kist of 1320 and obtained an ex parte decree on the 20th of September 1913. In 1914, the estate came under management under the provisions of the Encumbered Estates Act and the manager brought Rent Suit No. 1514 of 1915 against the present plaintiffs for rent from 1319 to the 12-annas kist of 1322, That suit was decreed and the amount of the decree was deposited by the plaintiffs on the 24th of October,

1916. In that year the Midnapur Zemindary Company took out execution of their rent-decree in Execution Case No. 560 of 1916; and, on the 4th of December, 1916, the plaintiffs' holding was sold at auction and purchased by defendant No. 1. When the auction-purchaser took possession on the 17th of June, 1917, the plaintiffs alleged that they came to know of the ex parte decree and applied to the Revenue Court and got the ex parte decree set aside and the suit dismissed on the 15th of December, 1917. They then applied to have the sale set aside, but failed and, therefore, they instituted this suit alleging that the sale was fraudulent and without jurisdiction.

4. The argument is that as the proprietor of the encumbered estate had granted a usufructuary mortgage, the rent due by the tenants was taken by the mortgagee in lieu of interest on the loan and, that in recovering a decree for rent against the tenants, the mortgagee was only recovering interest against his debtor and that this was a debt or liability of the proprietor of the encumbered estate; and, consequently, no proceedings in execution of the decree could be taken after 1914. It was for the manager of the estate to realize rents from the tenants and to apply the income in the manner directed by the Act; and it was not open to any individual creditor to proceed by way of execution on his own account. It was contended that all that the Midnapur Zemindary Company could do, after the estate came under management was to file their decree before the manager. In reply to this argument, it is contended that Section 3 contemplates the stay of proceedings pending in Court with regard to the property of the proprietor of the encumbered estate and that the object of the rule is the protection of the estate. But here no proceedings were taken against the estate, but the Midnapur Zemindary Company was only executing a decree against the tenants. It is further contended that when the decree was passed, the tenants' liability to pay and the zemindar's right to realize the rent were merged in. the decree and the debt was no longer a contractual debt; and that such a debt is not contemplated by Section 3 of the Act., It is to be noticed that the manager sued the tenants for the rent of the years for which the Midnapur Zemindary Company had already brought a suit, and realized the rent from them. As the ex parte decree of the Midnapur Zemindary Company was set aside, it must be taken that the tenants, and consequently, the manager, had no notice that proceedings for recovery of this rent had been taken by the usufructuary mortgagee before the date when the estate came under management. The manager, finding arrears outstanding, was bound to take steps to realize the rent and the hardship of the procedure adopted by the Zemindary Company is apparent, as the tenants have paid the rent for these years and have satisfied the decree, while their holdings have been taken from them in execution of another decree for the same years. A state of things like this could only happen because of the existence of an encumbrance and the claim of the mortgagee although directly against the tenant, is substantially a claim against the proprietor for interest on his mortgage. I am, therefore, inclined to think on the whole that the argument on behalf of the appellants is sound and that the

procedure adopted by the Midnapur Zemindary Company in executing their decree after the estate had come under management was contrary to law; and the sale in execution was without jurisdiction and must be set aside.

5. Two other points were taken on behalf of the appellants. The first was with regard to Jehur Singh, one of the recorded tenants. The learned Subordinate Judge found that he was not dead at the time of the decree as had been alleged by the plaintiffs; but, it is argued, that if he was dead at the time of the execution, the sale was void unless his representative was brought on the record. But there is nothing to show, and no finding, that he was dead at the time of the execution. The second point was that the trial Court found that one Udhab, the son of one of the recorded tenants, Bidai Bhumij, was not brought on the record and, therefore, the decree was not a rent-decree; and "that this point has not been dealt with by the Subordinate Judge. The point is not specifically dealt with, but the learned Subordinate Judge says that it appears from the khatian and the decree that all the persons named in the khatian or their heirs were sued.

6. But on the first ground the appellants are entitled to succeed and the appeal must be decreed with costs and the decree of the Subordinate Judge set aside and the plaintiffs' suit decreed with costs throughout.