

(1925) 08 CAL CK 0030
In the Calcutta High Court

Barada Prosad Roy Chowdhury and Others

APPELLANT

Vs

Tarak Nath Mandal and on his death his heir and legal
representative Bhaba Sindhu Mandel

RESPONDENT

Date of Decision : 18-08-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 13

Citation : 94 Ind. Cas. 147

Hon'ble Judges : Ewart Greaves, J; Duval, J

Bench : Division Bench

Judgement

Ewart Greaves, J.—Appeals Nos. 358 and 359 are by the defendants. In the suits out of which these appeals arise, namely, 484 and 485...the plaintiff sued for recovery of khas possession of certain land on declaration of his title thereto. The plaintiff based his title on a purchase in the year 1911 in execution of a money decree against two per-sons Rati Kama and Kshetra, the purchas being of a jama which these two persona held under the zemindar. The defence in these suits was that in the year 1915 the zemindar had brought a rent suit against Rati Kanta and Kshetra the recorded tenants and brought the tenure to sale and himself purchased it thereafter settling it with the defendants. In the year 1911 sale it was not expressly stated that the property was a tenure and it appears that no landlord's fee was paid and no notice was given to the landlord under the provisions of Section 13 of the Bengal Tenancy Act. Under these circumstances it is urged before us in this appeal that the title which the defendants obtained by a settlement from the landlord in 1915 should prevail against the prior purchase of the plaintiff in 1911, the suggestion being that as the landlord's fee was not paid and the notice was not given, the tenure did not pass at the sale in 1911. The first Court dismissed the suit holding that in 1911 there had been no sale of the tenure as the landlord's fee had not been paid and the notice had not been served. The second Court held agreeing with the first Court that the property was a tenure but held that the fact that the fee was not paid and the notice was not given did not affect the passing of the tenure and

that accordingly the plaintiff's right by virtue of his purchase in 1911 prevailed over the subsequent purchase in 1915. So far as the question of non payment of the landlord's fee is concerned this point is clearly unarguable having regard to the provisions of Bengal Council Act I of 1903. Section 1 of the Act provides that no transfer which has heretofore been made or which may hereinafter be made under inter alia Section 13 of a permanent tenure shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the section has not been paid. But it is stated that notwithstanding this provision the failure to serve the notice brings about the result that the tenure has not passed. Now turning to Section 13 of the Bengal Tenancy Act it seems to me that the payment of the landlord's fee and the payment of the fee for service of notice are really one and the same transaction and; I think that it cannot have been the intention of the Legislature to provide that the mere failure to serve the notice has the effect of invalidating the sale of the tenure. I think, therefore, for these reasons that the point raised in the appeal is not a good one and that the mere failure to serve the notice in 1911 and to pay the landlord's fee did not affect the passing of the tenure at the sale in 1911" that being so the landlord's purchase in 1915 can have no effect and with it must fail the settlement of the defendants by him as tenants on the land.

2. The other appeal which is before us No. 2316 of 1923 must also be dismissed having regard to the decision just given in the other appeals. In the result, these appeals fail and are dismissed with costs. We fix the hearing fees at two gold mohurs for the two miscellaneous appeals.

Duval, J.

3. I agree.