

(1931) 07 CAL CK 0010
In the Calcutta High Court

Bhola Nath Chatterjee

APPELLANT

Vs

Maharajadhiraj of Burdwan and Others

RESPONDENT

Date of Decision : 21-07-1931

Acts Referred:

Bengal Tenancy Act, 1885 — Section 174

Citation : AIR 1932 Cal 265 : 137 Ind. Cas. 430

Hon'ble Judges : Jack, J

Bench : Division Bench

Judgement

Jack, J.—In this case a Rule has. been issued on the opposite party to show cause why the order of the District Judge in appeal and the order of the Munsif of the Second Court at Bankura, vacating an order setting aside a sale, and confirming the sale should not be set aside. The property in question was sold in execution of a decree on 17th April, and the sale was set aside on deposit by the petitioner of the decretal amount u/s 174, Ben. Ten. Act, on 8th May and the order now objected to is an order cancelling the order setting aside the sale, on an application for review made by the auction, purchaser under Order 47, Rule 1. The sale-was set aside on the ground of the discovery of new and important matter which could not be produced by the auction purchaser at the time when the order setting aside the sale was passed. The new and important matter consisted of a judgment and decree dismissing a suit by the plaintiff, to establish his title to the land in suit. In that suit it was found by the Court that the plaintiff had no title in the land.

2. In this Rule it is urged that there was no proof of the allegation that this previous decree was not within the applicant's knowledge at the time the order setting aside the sale was passed. Under Order 47, Rule 4, Clause 2 (b), there must be strict proof that the new and important matter was not within the knowledge of the applicant at the time the order was passed. In this case it is clear that not only was there no proof of want of knowledge on the part of the applicant, but there was even no allegation that the previous decree was not

within his knowledge. But it seems to me that apart from the reason given by the Court below, for reviewing the order, on the ground of new and important matter, not within his knowledge there was a very good reason, for reviewing the order, inasmuch as the record shows that no notice of the application to make the deposit u/s 174, was given to the auction purchaser, and under the proviso to Clause 2, Section 174-A, no order can be made under that section, unless notice has been given. Therefore, although the review was wrongly made on the ground of new and important matter not within the applicant's knowledge the review was justified by the fact, that no [notice of the application to deposit was given to the auction purchaser. It is argued that on the day which was fixed for confirmation of the sale, it must be held that the auction purchaser had notice. I find however that the balance of the decretal amount was paid long before the date fixed for the confirmation of the sale, so that there was no need for the auction purchaser to appear on that date. But in any case, the section requires that notice of the deposit should be given and this was not done, and therefore the Court was entitled to review the order setting aside the sale.

3. The second ground on which this Rule is sought to be supported is that the case ought to have been reheard on review, inasmuch as the previous judgment and decree are not sufficient in themselves to show that the depositor had no interest in the sale. But I think that there is no substance in this contention, because the findings of the Court in the title suit make it quite clear that the Court held that the plaintiff had absolutely no title to the land in suit. It is suggested that the plaintiff had a title as a tenant under one of the defendants, but if he had any such title, he ought to have established it in that suit. The findings also seem to negative any such title and the Record of Rights is also against any such title in the plaintiff.

4. The third point raised is that the Court which passed the review order had no jurisdiction to review the matter inasmuch as the case was transferred to that Court by the District Judge without notice to the opposite party. It is true that u/s 24, Civil P.C., when a Court transfers a suit on the application of the parties, it must be after notice to the parties and after hearing such of them as desire to be heard. In the present case the review" application was heard in the first instance by the Court of 2nd Munsif, and when the application to the District Judge for transfer was made, the order sheet shows that neither party had adduced any evidence, that the arguments of the pleaders had been heard and the case stood adjourned for further hearing and orders. It seems likely therefore that the opposite party may have objected to the review application being heard by the Court which had not passed the original order and that is what led the opposite party to apply to the District Judge for transfer to the Court of the Munsif who passed the original order. In any case, there is no reason to think the petitioner was prejudiced by this order of transfer and in the circumstances, I think that this transfer without notice is not a sufficient ground for holding that the Munsif who disposed of the case had no jurisdiction. It is an irregularity, but not a sufficient ground for setting aside the review order. On these considerations, I

think this Rule must be discharged. I make no order as to costs.