

(1922) 11 PAT CK 0016
In the Patna High Court

Bishun Dayal Singh and Others

APPELLANT

Vs

Jagdish Narayan Singh and Others

RESPONDENT

Date of Decision : 28-11-1922

Acts Referred:

Bengal Tenancy Act, 1885 — Section 170(3)

Citation : AIR 1924 Patna 513 : 80 Ind. Cas. 823

Hon'ble Judges : John Bucknill, J

Bench : Single Bench

Judgement

John Bucknill, J.—This was an application in Civil Revisional Jurisdiction made by certain petitioners asking that an order passed by the Munsif of Barh on the 20th February 1922, should be set aside. (There are two other cases Nos. 173 and 174 of 1922 which are analogous and my present decision is, therefore, applicable also to them).

2. The facts are very short. The applicants are co-sharer-landlords in a certain mouzah, some of the respondents are also co-sharers, others tenantry. The petitioners brought a suit against the respondent tenantry for their share of arrears of rent for the years 1321-1324 Fs., obtained a money-decree, put the holding up for sale and bought it.

3. The opposite party landlords subsequently brought a suit for their share, also obtained a decree (but a rent-decree) and sought to sell the holding. The petitioners deposited the decretal amount in Court u/s 170, Clause 3 of the Bengal Tenancy Act but the landlords opposite party objected and applied for the release of the holding on the 11th February 1922 after the sale proclamation had been issued fixing February 20th for the sale. The Munsif upheld the objection and declared the deposit invalid. Though not perhaps here very material, it may be mentioned that, as a matter of fact, the sale proceeded and took place on February 22nd and the holdings were sold to third parties, the 23rd March was fixed for the confirmation of the sale. The petitioners applied on March 18th to set aside the sales under Order XXI, Rule 90, two of these applications were

however dismissed for want of prosecution on May 13, and the sales were confirmed. These last mentioned facts are deposed to in an affidavit filed before me on 24th October on behalf of the opposite party landlords.

4. The Munsif gave a lengthy judgment. He held that as the holdings were not transferable by custom the applicants being purchasers of entire holdings in money-decrees had not acquired even a voidable interest in the holdings on sale. He commented on certain decisions of the Calcutta High Court which appeared to uphold a contrary contention but regarded himself as bound by the decisions of the Patna High Court notably in the case of Rameshwar Singh Bahadur v. Raghunandan Khabas 38 Ind. Cas. 337 : 1 P.L.J. 403 : 2 P.L.W. 364. It was contended by the learned Vakil for the applicants that the provisions of Sub-section 3 of Section 170 of the Bengal Tenancy Act were not applicable at all in this case, firstly because he now alleged, that the decree obtained by the opposite party landlords was a money and not a rent-decree, and, secondly, because the section cannot be applied when the contest is between co-sharer-landlords.

5. The learned Vakil urges that it was a money-decree because it would appear from the execution petition filed by the opposite party that there were two khatas to be sold. The learned Vakil for the opposite party objected to this point being taken as it had never been raised before and that it had throughout been maintained that the deposit was being made under the very provisions of the Act which the learned Vakil for the applicants was now wishing to discard. It was, however, argued for the applicants that if the decree was money-decree the deposit could be made under the provisions of Order XXI, Rule 89 of the Civil Procedure Code. The learned Vakil for the respondent points out in answer to this that because two khatas were to be sold it does not follow that the decree is not a rent but a money-decree as they may have and in this case did have a consolidated rent.

6. With regard to the second point, namely that the section could not be applied when the contest lay between co-sharer-landlords, the learned Vakil for the applicants referred to the case of Bipra Das Dey v. Rajaram Bannerjee 3 Ind. Cas. 306 : 36 C. 765 : 18 C.W.N. 650 where it was held that Section 170 of the Bengal Tenancy Act does not apply to a decree obtained by a co-sharer landlord for his share of rent in respect of two holdings and that, therefore, when the holdings are attached in execution of such a decree a claim u/s 278 of the CPC was maintainable. The rights of a landlord who purchases all the right, title and interest of a tenant in a sale by himself in execution of a money-decree obtained by him for his share of rent are not the same as those of a third party.

7. The learned Vakil for the respondents meets these arguments with a strong case. He points out that the applicants are not transferees in law, that is to say, in the sense that their transfer is not recognised as valid by the co-owners he is in precisely the same position as a third party. The case quoted by the Munsif Maharaja Sir Rameshwar Singh Bahadur v. Raghunandan Khabas 38

Ind. Cas. 337 : 1 P.L.J. 403 : 2 P.L.W. 364 clearly lays it down he contends that an unregistered transferee of an occupancy holding is not entitled to make a deposit u/s 170(3) of the Bengal Tenancy Act. The position is defined by Sub-section 2 of Section 22 of the Bengal Tenancy Act. See also the decision in Mahbdeo Singh v. Langat Singh 40 Ind. Cas. 257 : 2 P.L.J. 457 : I.P.W. 504 : (1917) Pat. 169 where a Special Bench of this Court held that a purchaser without the landlord's consent of a nontransferable occupancy holding which has been proclaimed for sale u/s 163 of the Bengal Tenancy Act is not entitled to deposit the amount of the landlord's decree and costs u/s 170(3) of that Act. Quite recently it has been similarly so held also by the Calcutta High Court in Muhammad Ismail v. Satyesh Chandra Sarkar 26 C.W.N. (170). A purchaser of a non-transferable holding acquires no interest as against the landlords see Lakhi Kant Das Mahapatra v. Balabhadra Prasad Das 25 Ind. Cas. 546 : Cri.L.J. 400 and others.

8. The cases are no doubt rather confusing at first sight but I think it is important to try and analyze what is the real legal position of the parties. The applicants sold the holding of the tenants for their share of arrears of rent in execution of a decree obtained as a money-decree they bought whatever the tenants had i.e., the tenants' right, title and interest. The applicants pursued their own remedy alone. When the opposite parties landlords brought their action they joined all the other co-landlords and obtained a rent decree. The applicants only acquired what a third party outsider would have acquired on purchase. The holding was not one transferable by custom and a third party purchaser would not as against the landlords have acquired unless he had been registered as a transferee by them, any interest which on a sale of the holding was voidable. In fact they purchased nothing tangible which they could utilize to bring themselves within the scope of the section of the Bengal Tenancy Act which they sought to invoke.

9. The opposite party landlords have always contended that the holding was a non-transferable one and it has not been seriously contested that it was not, no attempt was made by the applicants to prove the contrary and the Munsif definitely found it was non-transferable. There is no ground whatever for me to hold to the opposite.

10. The applicants must accept and do now really admit that they must accept the broad proposition laid down by his Court that if the holding is a non-transferable one a purchaser under a money-decree cannot avail himself of Section 170(3) of the Bengal Tenancy Act and they now try to set up before me a case wholly different from that put forward before the Munsif. They now suggest that the Bengal Tenancy Act does not apply at all and that the landlord opposite party's decree was a money and not a rent decree; they wish to throw overboard what they alleged before the Munsif altogether. I do not think that in revisional jurisdiction I should countenance such a complete volte face. But, even so, they do not prove clearly that the landlord opposite party's decree was a

money decree and even if they had I see no ground for supposing that they would have any locus standi to pay in the money under Order XXI, Rule 89 or what good it would do them if they did and they certainly never contemplated in the very least that their proposal to pay in was made or purported to be made under the provision of any such order.

11. As for the proposition that when two co-owners are at loggerheads as in this case the Bengal Tenancy Act has no application, I cannot see any clear authority for such a proposition or that a co-owner in the position of the applicants is in any really stronger position than a third party purchaser.

12. I think the application must stand or fall by the case as it was presented to the Munsif and I have no doubt that as the law at present stands the Munsif was right in the view which he took.

13. I must, therefore, decline to interfere.