
(1946) 07 CAL CK 0023
In the Calcutta High Court

Brojadulal Dhar and Others

APPELLANT

Vs

Khoiruma Khatun Choudhurani

RESPONDENT

Date of Decision : 31-07-1946

Acts Referred:

Bengal Tenancy Act, 1885 — Section 168A

Citation : AIR 1947 Cal 248

Hon'ble Judges : Chakravartti, J

Bench : Division Bench

Judgement

Chakravartti, J.—The question of law arising in this appeal, which is one u/s 168A, Ben. Ten. Act, is concluded by authority.

2. It appears that on 19-4-1938, the appellants, who were the landlords of a patni held by the respondents, brought a suit for the putni rent for the years 1341-1343 B.S. When this suit, was pending, the appellants initiated proceedings under the Putni Regulation for the rent of the year 1344 B.S. and at the putni sale held in, consequence thereof, purchased the tenure themselves on 16-5-1938. The rent suit was subsequently decreed for Rs. 1714-14-6 on 4-11-1938 Thereafter, Section 168. A was introduced into the Bengal Tenancy Act and came into force on 9-1-1941. On 19-1-1942, the appellants applied, for execution of the decree against other properties of the judgment-debtors and this appears to have, been the first application.

3. The inevitable objection u/s 168-A, Ben. Ten. Act was raised by the judgment-debtors who contended that, in view of the provisions of the section, the decree could not be executed against properties other than the defaulting tenure. The appellants replied by relying on the proviso to Section 168-A(1)(a) and contended that the tenure having been extinguished by merger, by reason of the purchase by themselves at the putni sale, the section could be no-bar to execution of the decree against other properties of the judgment-debtors. The Munsiff overruled the contention of the appellants in the view that the proviso applied only to a case where the term of the tenancy had expired and not to one

where the tenure or holding had itself disappeared. Accordingly, he held that the appellants were not entitled to execute the decree by attachment and sale of other properties, although other modes of execution were open to them.

4. This decision was reversed by the District Judge on appeal, who held, relying on *Satish Chandra Hui and Others Vs. Sudhir Krishna Ghosh and Others*, which had by then been reported, that the proviso applied, and indeed applied only, to a case where the tenancy itself had been extinguished and that such extinction could be caused by merger. He held further that merger had taken place in the case before him and, in that view, directed the execution to proceed.

5. Thereupon, a second appeal was preferred by the judgment-debtors to this Court (S.M.A. No. 76 of 1943) and in that appeal it was held by Henderson J. that the District Judge had been in error in holding, in the absence of any evidence, that there had been a merger. Accordingly, he remanded the case to the lower appellate Court with a direction to take evidence and decide thereon "whether the Putni has merged in the superior interest of the decree-holders."

6. When the case went back to the lower appellate Court, no evidence was adduced by either side, but, on the other hand, it was admitted on behalf of the judgment-debtors that there had been a merger of the Putni in the superior interest, by reason of which it had ceased to exist. The case was heard by an Additional District Judge who, however, held that the proviso to Section 168A(1) (a) would still not apply, inasmuch as the merger had taken place and the tenure had been extinguished before the section came into force. In taking this view, he followed the opinion of Roxburgh J., as expressed in *Sm. Swarnamonjuri Dassi, Excatrix to estate of Babu Broja Lal Seal Vs. Fakir Chandra Karar and Others*, and appears to have disregarded the contrary view taken by a Division Bench in *Atul Chandra Chakravarti and Others Vs. Upendra Narayan Mukhopadhyaya*, . In the result, the Additional District Judge upheld the objection of the judgment-debtors that the decree could not be executed against any property other than the Patni which, however, as has been seen, no longer existed. It is against this decision that the decree-holders have preferred the present appeal.

7. I may observe at once that the learned Additional District Judge had no right whatever to ignore the decision of a Division Bench in *Atul Chandra Chakravarti and Others Vs. Upendra Narayan Mukhopadhyaya*, and follow the opinion of Roxburgh J. instead. The latter was only one of the Judges who decided the case in *Sm. Swarnamonjuri Dassi, Excatrix to estate of Babu Broja Lal Seal Vs. Fakir Chandra Karar and Others*, and the opinion expressed by him was not subscribed to by the other member of the Bench, Blank J., who adhered to the view taken in the decision in *Atul Chandra Chakravarti and Others Vs. Upendra Narayan Mukhopadhyaya*, to which he was a party. The Additional District Judge could not have been unaware of the earlier decision of the Division Bench, for, it is discussed at length in the very judgment of Roxburgh J. on which he relied. It is, therefore,, a matter for regret that the learned Judge should have considered himself free to depart from his duty of following the decision of the Division

Bench, which was binding on him whether he considered it right or wrong, and to take the liberty of following, in preference, the opinion of a single Judge of this Court.

8. However that may be, the question has since been considered further in later decisions of this Court and may now be taken to be finally settled. It has been held by Khundkar and Biswas JJ. in *Amritalal Chatterjee Vs. Manindra Nath Biswas and Others*, and again by Mukherjea and Ellis JJ. in *Radha Ballav Jew Thakur v. Mahima Rajan Roy* 33 AIR 1946 Cal. 6 that in order that the proviso to Section 168A(1)(a) may be attracted, it is not necessary that the tenancy should have expired, after the section had come into force. The ground upon which the Additional District Judge gave effect to the objection; of the judgment-debtors must, therefore, be held to be erroneous.

9. This really disposes of the appeal. The only doubt I have felt is as to whether the exception made in the decided cases, to the effect that the proviso would not apply in a case where the tenancy had expired by reason of its purchase by the landlord himself in execution of the same decree, would also not hold good in cases where the landlord had purchased the tenancy, not in execution of the same decree but otherwise. In the present case, the landlord purchased the tenure at a Patni sale. I find, however, that this matter also is covered by the authority of Division Benches by which, sitting singly, I am bound. In *Radha Ballav Jew Thakur v. Mahima Rajan Roy* 33 AIR 1946 Cal. 6, the landlord had purchased the Patni in execution of a certificate under the Public Demands Recovery Act; and in *Lakshman Chandra Roy Choudhury and Another Vs. Birendra Kumar Singha and Another*, he had purchased it at a Patni sale, as in the present case. It must, therefore, be held that the appellants are entitled to the benefit of the proviso to Section 168A(1)(a).

10. The appeal, however, has abated as against respondents 2 to 4, who died during its pendency in this Court and whose heirs have not been substituted and brought on the record. But as the liability for rent is a joint liability, the whole appeal has not abated.

11. In the result, the appeal is allowed as against respondent 1 and so far as she is concerned, the judgments and orders of both the Courts below are set aside and the objection u/s 47, Civil P.C., dismissed. The execution as against respondent 1 will proceed. The appeal having abated as against the deceased respondents 2 to 4, the orders of the Courts below, so far as they are concerned, necessarily stand. As there was no appearance on behalf of the respondents, there will be no order for costs.