

(1899) 01 CAL CK 0002
In the Calcutta High Court
Case No : Rule No. 2191 of 1898

Chandra Sekhar Patra and Mondakini Debi

APPELLANT

Vs

Rani Manjhee and Others

RESPONDENT

Date of Decision : 12-01-1899

Acts Referred:

Citation : (1899) 01 CAL CK 0002

Judgement

1. It seems that in this case one of several fractional co-sharers brought a suit against the tenant for arrears of rent due on account of the entire tenure or holding. He made his co-sharers party Defendants, alleging that they refused to join in the suit and asked for a decree for the entire rent and that out of that rent when realized, he might get his share and the balance might be given to the co-sharers. A decree was in effect made in these terms. Afterwards the decree holder applied to execute the decree, saying that his co-sharers still refused to join in the application for execution. The lower Court has held that, as a matter of fact, he had attached the tenure in respect of which the arrears had been decreed. Some question has been raised before us to the effect that what was attached was not the tenure, but interest of the judgment-debtor in the land. Looking, however, at the terms of the application, we are not prepared to say that the attachment was not of the tenure itself. After the attachment, a third party came forward and claimed some interest in the tenure under the provisions of sec. 278, C. C. P., and the Munsif has allowed the claim and exempted the share of the objector from sale, holding that sec. 170 of the Bengal Tenancy Act did not apply to this attachment because all the landlords did not join in the application of execution. He has applied the provisions of sec. 188 of the Tenancy Act which says : " When two or more persons are joint landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them." It seems to us that sec. 188 has no application to a case like the present. The suit was properly brought for the rent of the entire tenure and all the parties interested as landlords were before the Court. The

mere fact that all of them were not Plaintiffs in the suit did not matter so long as the decree was obtained by one of them in the presence of the others for the rent of the entire tenure. The decree for the rent obtained, at the instance of one of the co-sharers had in this case the same effect as if the decree had been obtained by all of them. If all of them were not obliged to join in the suit in order to obtain the decree, it seems to us that they were none the more obliged to join in the application for execution. The application here, as I have stated, was for the sale of the tenure and the tenure has been attached in execution of the decree. Under the provisions of sec. 170 of the Tenancy Act, sec. 278, C. C. P., does not apply to the attachment so as to enable any third party to come in and claim interest in the tenure. In this view of the case, the Munsif had no power to make any order releasing any portion of the tenure which had been attached, and his order allowing the claim must therefore be set aside. We accordingly make the Rule absolute with costs-one gold mohur.