

(1925) 03 CAL CK 0054
In the Calcutta High Court

Dhirendra Nath Ghose and Others

APPELLANT

Vs

Charushashi Debya

RESPONDENT

Date of Decision : 17-03-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 150
Transfer of Property Act, 1882 — Section 52

Citation : 90 Ind. Cas. 431

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

Bench : Division Bench

Judgement

Ewart Greaves, J.—This is an appeal by the plaintiffs u/s 15 of the Letters Patent from a judgment of Mr. Justice Duval. The suit was one for rent and the contention of the tenant was that he was only liable to pay rent at the rate of Rs. 30-10-8 gandas whereas the landlord claimed rent at the rate of Rs. 39. Before I state the questions that arise in this appeal it is necessary to state a few facts. On the 15th June 1914 proceedings were started by the landlord for enhancement of rent u/s 105 of the Bengal Tenancy Act. The judgment in that case was delivered on the 24th December 1915 fixing the rate of rent at Rs. 39 in accordance with an entry in the Record of Rights. In the meantime subsequent to the institution of the proceedings u/s 105 and whilst these were pending the landlord commenced a suit for rent against the predecessor-in-interest of the present respondent, Beni Kanta Banerjee. The decree was passed in that suit on the 25th August 1915 on the basis of a rental of Rs. 34-10-8 gandas. The holding was sold in execution of the decree sometime in August 1915 and the sale was confirmed on the 30th September 1915, the purchaser being Dinesh Chandra Chatterjee transferred his interest to the present respondent.

2. Three points were urged before us in this appeal against the judgment of the learned Judge who held that the respondent was not bound by the proceedings u/s 105. The first point is that the sale is merely a devolution and that the provisions of Order XXII, Rule 10 of the C.P.C., apply to the case; and secondly, it was contended that in any case the proceedings u/s 105 were contentions and

operated as *lis pendens* and that accordingly, the respondent was bound by the proceedings under the provisions of Section 52 of the Transfer of Property Act. Thirdly, it was contended that by virtue of the provisions of Section 150 of the Bengal Tenancy Act the plea taken by the respondent was not open to him as he did not deposit the rent which he had admitted to be due, namely, Rs. 34-10-8 gandas.

3. So far as the first point is concerned, I have endeavoured to understand the argument that was addressed to us based upon the provisions of Order XXII, Rule 10. But I have been unable to see how that rule of Order XXII has any application whatsoever and the first point accordingly fails.

4. Secondly, so far as Section 52 of the Transfer of Property Act is concerned I am unable to agree with the argument of the learned Advocate that any right to Immovable property was directly and specifically in question. In my view the rights referred to by those words of Section 52 are rights such as arise with regard to sale, specific performance lease and so on; but I cannot see how a mere claim for rent is a right to Immovable property within the provisions of Section 52. No authority has been cited to us for the proposition and I am not prepared to hold that a claim for rent is a right to Immovable property within the meaning of those words in Section 52. We were referred in support of the learned Advocate's argument, to an unreported case of this Court, namely, an appeal from an Appellate Decree No. 480 of 1916. But I cannot see how that judgment affects the matter at all as the only question there was whether the person there who occupies the same position as the respondent here knew of the proceedings u/s 105. The Court there found that he knew of those proceedings and that he knew of those proceedings at the time he purchased and that he was clearly bound by those proceedings. This is the only point that was decided in that case and I do not see how that case helps the appellants in this case.

5. With regard to the third point, namely, that Section 150 of the Bengal Tenancy Act debars the respondent from setting up the plea which he raised. This point seems to be decided by the case of *Banarasi Pershad v. Makhan Roy* 30 C. 947 : 7 C.W.N. 514. In that case the same argument was used with regard to the provisions of Section 150 as was urged before us in this appeal and Mr. Justice Banerji there decided that Section 150 did not apply where the rate of rent was in issue. We respectfully agree with that decision and under the circumstances, Section 150 has no application.

6. The appeal accordingly fails and is dismissed with costs.

Cuming, J.

7. I agree.