
(1926) 06 PAT CK 0016
In the Patna High Court

Durga Singh

APPELLANT

Vs

Musammat Ram Dasi Kuar and Dipan Singh and Others

RESPONDENT

Date of Decision : 10-06-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148A, 43

Citation : AIR 1926 Patna 503 : 96 Ind. Cas. 569

Hon'ble Judges : Ross, J;Kulwant Sahay, J

Bench : Division Bench

Judgement

Ross, J.—This is an appeal by defendant in a suit brought by the plaintiff who was a tenant. The, defendant is a co-sharer landlord who obtained a decree for rent u/s 148A of the Bengal Tenancy Act and sold the holding of the plaintiff and purchased it himself. The plaintiff sought to recover the holding on the ground that the rent-decree was fraudulent and that the execution was defective by reason of suppression of the processes.

2. The Courts below decided against the plaintiff on the merits of the case, but decreed the suit in his favour on the ground that notice to the co-sharer landlords u/s 43 Ind. Cas. 3 : 31 C.L.J. 73.of the Bengal Tenancy Act had not been given. The learned Subordinate Judge relied to the decision of this Court in Ghanshyam Chaudhury v. Basdeb Jha 60 Ind. Cas 529. The earliest decision on the point is Sarip Hohan v Tillattama Debi 43 Ind. Cas. 3 : 31 C.L.J. 73 where it was decided that the provisions of Section 158B(2) are mandatory and not merely directory, and that a sale without notice under that section is invalid The next case was Ahamad Biswas v. Benoy Bhusan Gupta 53 Ind. Cas. 515 : 23 C.W.N. 931 where that earlier decision was followed, and it was further held that the effect of a sale without this notice was that the purchaser was in the position of an ordinary purchaser under a decree for money This view was again taken in Norendra Bhusan Roy v. Jotindra Nath Roy 55 Ind. Cas. 402 where it was laid down that the sale was not a nullity but had the effect of a sale under a decree for money In the latest decision in Rajani Kanta Ghose and Others Vs. Sheikh

Rahman Gazi and Others, , it was held that the omission to serve this notice does not nullify the sale and does not even alter its character to that of a sale held in execution of a decree for money if the co-sharer landlord has knowledge of the sale and acquiesces therein. The provision for notice to the co-sharer landlords is for the benefit of the co-sharer landlords, and the notice is not essential to the validity of the sale and omission to serve the notice is a mere irregularity. In the decision of this Court referred to by the learned Subordinate Judge these cases were not considered and it seems to have been assumed without discussion that the sale was void. The weight of authority is that the effect of such a sale is at least, that of a sale in execution of a decree for money. This is sufficient to give the defendant a valid defence and the suit must be dismissed.

3. It is said that the plaintiff filed the suit on the strength of the decision of this Court and that he ought now to be allowed to prove that the sale was irregular under Order XXI, Rule 90. But the fourth issue was whether the processes in Execution Case No. 476 of 1920 were properly served and whether the plaintiff had knowledge of them. Evidence on this issue was gone into and it was decided in favour of the defendant. Nothing further could have been done on an application under Order XXI Rule 90.

4. The Result is that the appeal must be decreed and the suit dismissed but in view of the conflict in the decision with out cots in any Court.

Kulwant Sahay, J.

5. I agree