

**(1887) 11 CAL CK 0008**  
**In the Calcutta High Court**

Fotick Chunder Dey Sircar

APPELLANT

Vs

E.G. Foley and Others

RESPONDENT

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**Date of Decision :** 23-11-1887

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 65  
Transfer of Property Act, 1882 — Section 68

**Citation :** (1888) ILR (Cal) 492

**Hon'ble Judges :** Norris, J;Beverley, J

**Bench :** Division Bench

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## Judgement

Norris, J.—The question that arises for consideration in this ease is whether, since the passing of the Bengal Tenancy Act, 1885, a landlord who obtains a decree for rent is entitled, if he pleases, in the first instance, to attach the moveable property, and, if he pleases, the person of his judgment-debtor, or whether he is obliged, in the first instance, to endeavour to execute his decree by putting up for sale the tenure, the rent in respect of which is in arrear, and for which he has obtained a decree.

2. The District Judge has held that the landlord is not entitled, in the first instance, to attach the moveable property, and, if ha so pleases, the person of the defaulting tenant.

3. In support of this view, the District Judge has relied upon the case of Lalit Mohun Roy v. Binodai Dabee 14 C 14. With reference to that case, which was decided by Mr. Justice Ghose and myself, two observations are to be made. First, it was a decision under the old rent Act (Act VIII of 1869), and we especially called attention, at the conclusion of our judgment, to the fact that the conditions of things as they existed under that Act had been entirely altered by the Bengal Tenancy Act.

4. In the second place it is to be observed that in that case we held that if the landlord wished, in the first instance, to proceed against any Immovable property of the defaulting tenant, the Immovable property which he must attach and put

up for sale is the tenure, in respect of the rent of which he has obtained a decree.

5. We said nothing as to the landlord's right to proceed against the moveable property of the defaulting tenant in the first instance. That question was not before us.

6. Upon these grounds we are of opinion that the case cited does not support the conclusion at which the District Judge has arrived.

7. On behalf of the respondents it has been pointed out that, by virtue of Section 65 of the Bengal Tenancy Act, 1885, rent is declared to be "a first charge" on the tenure; this "charge," it was argued, was such a "charge" as is defined by Section 100 of the Transfer of Property Act, and being such a "charge" it was argued that "'all the provisions there in before contained" (i.e., in the Transfer of Property Act) "as to a mortgagor," so far as might be "applied to the plaintiff, appellant, as the owner of the tenure," i.e., "as the owner of the property;" and that the provisions of ss. 81 and 82 of the Transfer of Property Act, and all the provisions there in before contained (i.e., previous to Section 100) "as to a mortgagee instituting a suit for the sale of the mortgaged property, so far as might be, applied to the plaintiff, he being a person having such charge;" and it was further contended that amongst the provisions there in before contained applicable to the plaintiff were the disabilities contained in Section 68 of the Transfer of Property Act.

8. One answer to this argument is this: The provisions of Section 68 are not amongst those which are referred to in Section 100.

9. Section 100 speaks of the "provisions contained as to a mortgagor" and "as to a mortgagee instituting a suit for the sale of the mortgaged property." The provisions dealing with the rights and liabilities of a mortgagor are contained in Sections 60 to 66 inclusive.

10. Sections 67 to 77 inclusive deal with the rights and liabilities of a mortgagee; and of those sections the only one which Section 100 makes applicable to "a person having a charge not amounting to a mortgage" are those relating to "a mortgagee instituting a suit for the sale of the mortgaged property;" and Section 68 is not one of those sections.

11. And, further, supposing that Section 68 has any application to the matter, it only deals with cases where a mortgagee, may bring a suit for the mortgage money; it can have no reference to cases where after a suit has been brought and a decree obtained, the mortgagee seeks to sell any property in satisfaction of his decree. The disability, if there was any, ceased with the decree.

12. This, we think, is a sufficient and complete answer to Dr. Banerjee's argument. But we are not prepared to admit that the "charge" referred to in Section 65 of the Bengal Tenancy Act, 1885, is such a "charge" as is defined by Section 100 of the Transfer of Property Act. Section 65 of the Bengal Tenancy Act, 1885, is an enactment for the benefit of the landlord. It gives him rights

which are denied to other creditors. The effect of acceding to Dr. Banerjee's argument would be to deprive the landlord, at any rate for a time, of one of the rights and remedies which an ordinary judgment-creditor enjoys.

13. Seeing that Section 65 of the Bengal Tenancy Act, 1885, is an enactment for the benefit of the landlord, and considering that the provisions of Reng. Act VIII of 1869 as contained in Sections 59 to 61, and Section 65 as to the order in which properties belonging to a defaulting tenant might be brought to sale, find no place in the Bengal Tenancy Act, 1885, we cannot believe that it was the intention of the Legislature to tie the hands of a landlord, as they were tied under the old act. We are fortified in the view we take by a decision (Petheram, C.J., and Ghose, J.) where they held that the view taken by the District Judge, in the present case, was not correct.

14. Upon principle, therefore, and, so far as the cases go, upon authority, we are of opinion that the contention of Dr. Banerjee ought not to prevail.

15. We accordingly set aside the order of the lower Appellate Court and restore those of the first Court with costs of all Courts.