

(1917) 08 CAL CK 0016
In the Calcutta High Court

Gadadhar Ghosh

APPELLANT

Vs

Midnapur Zemindary Company Limited

RESPONDENT

Date of Decision : 27-08-1917

Acts Referred:

Citation : 43 Ind. Cas. 742

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the first defendant in a suit for recovery of possession of land on declaration of title. The ease for the plaintiffs is that the disputed land constituted the non-transferable holding of Arun Chandra Biswas and Hriday Nath Biswas and that the present defendants are in occupation on allegation of a purchase which has conferred upon them no valid title as against the plaintiffs. The Court of first instance dismissed the suit: on appeal that decision has been reversed by the Subordinate Judge.

2. The question in controversy between the parties is as to the effect of a deposit made by the 2nd defendant u/s 310 A. of the Code of 1862, which was subsequently withdrawn by the plaintiffs. On the 25th April 1903 the landlord in execution of a decree for arrears of rent against the recorded tenant purchased this property. On the 25th May 1903 the 2nd defendant made a deposit u/s 310A of the Code of 1882, with a view to the cancellation of the sale. He alleged that he had purchased the property from the admitted tenant on the 4th September 1900, and that as his Immovable property had been sold, he was competent to make a deposit u/s 310A. The Court directed that the decree holders auction-purchasers be called upon to show cause why the deposit should not be accepted and the sale set aside. Whether notice of this order was or was not served upon the Pleader for the decree-holders is not clear on the face of the record, but, on the following day, the sale was set aside. Three days later, on the 29th May 1903, an application was made on behalf of the decree-holders for leave to withdraw the amount in deposit. The application was granted and the money was

paid out in due course. The plaintiff instituted this suit on the 10th February 1914 for declaration that the defendants had not acquired a good title by their purchase of the 4th September 1900. The question thus arises, whether the plaintiffs are competent to succeed upon this allegation. The appellant has argued that on the principle of the decisions in *Thomas Barclay v. Syed Hossein Ali Khan* 6 C.L.J. 601 and *Ahmed Ali v. Roshan Ali* 91 Ind. Cas. 619, the plaintiffs cannot possibly succeed. We are of opinion that this contention is well-founded and must prevail.

3. The 2nd defendant, at the time of the application u/s 310A, asserted his purchase and the conveyance of the 4th September 1900 was filed in Court. The decree holders auction-purchasers were then in a position to challenge his title to make an application u/s 310A, which can be utilised only by a person whose Immovable property has been sold. The then applicant alleged that his property had been sold on the 25th April 1903 at the instance of the decree holders; the latter might and should have contended that the application was groundless, that what had been sold was not the property of the applicant, that he had not acquired a good title therein by his purchase of a non-transferable holding, and that the land was the property of the recorded tenant when the sale was held. Such objection should have been pressed before the sale was actually cancelled, if notice of the deposit was duly given to the decree holders. But whether such notice was or was not served, it is plain that the decree-holders became aware of the order for cancellation before the 29th May 1903. If an application for cancellation of the sale had not been made u/s 310A, it would have been incumbent on the Court to confirm the sale in due course and to grant a sale certificate to the decree-holders auction purchasers. When the decree holders found that a sum of money had been deposited u/s 310A by one who asserted a title by purchase, they should have made enquiries, and then at any rate they would have discovered the conveyance of the 4th September 1900. The decree-holders did not adopt this the obvious course, but withdrew the amount deposited in Court. In these circumstances, they cannot now be permitted to urge that the sale to the defendant was inoperative.

4. As a last resort, the respondents have argued that it would have been futile for the decree-holders to oppose the application u/s 310A, because on the authorities as they then stood, the Court would have held that the purchaser of a non-transferable holding was competent to make a deposit u/s 310A. No authority, however, has been brought to our notice which would have supported such a contention at the time.

5. If the decree-holders auction-purchasers had taken exception to the deposit, the sole point for consideration would have been, whether or not the person who had made the deposit was a person whose Immovable property had been sold. This question would have required decision between the applicant on the one hand and the landlords-decree-holders on the other hand. If, upon investigation, the Court had held that the applicant was a person whose Immovable property

had been sold, the matter would have been set at rest as between the parties. If, on the other hand, it was decided that the applicant was not a person of that description, the matter would equally have ended at that stage; the applicants would not have parted with their money and the sale to the decree holders would have been confirmed. It would be manifestly unjust to allow the decree-holders now to take up a position directly contradictory to what must be assumed to have been their view when they withdrew the deposited amount on the 29th May 1903.

6. The result is that this appeal is allowed, the decree of the District Judge set aside and that of the Court of first instance restored. This order will carry costs both here and in the Court of Appeal below.