

(1911) 02 CAL CK 0005
In the Calcutta High Court

Gobind Chandra Laha and Others

APPELLANT

Vs

Tara Pada Bhattacharjee and Others

RESPONDENT

Date of Decision : 08-02-1911

Acts Referred:

Bengal Tenancy Act, 1885 — Section 167

Citation : 9 Ind. Cas. 503

Hon'ble Judges : N. Chatterjea, J

Bench : Single Bench

Judgement

1. The only question raised in this appeal is whether the incumbrance of the defendants was annulled u/s 167 of the Bengal Tenancy Act.

2. The plaintiffs-appellants are patnidars of the mouzah in which the tank in dispute is situated and they purchased the darpatni at a sale held in execution of a decree for arrears of rent on the 22nd November, 1904. The defendants, who were sepatnidars and who claim to hold an incumbrance on the tank, applied to have the sale set aside on the 21st December 1904, which was, however, rejected on the 1st February, 1905, and sale was confirmed on the., 4th February, 1905. The purchasers obtained possession on the 22nd March 1905 and they applied u/s 167 of the Bengal Tenancy Act on the 10th January 1906. Notice u/s 167 was served on the 4th March, 1906, and the present suit was instituted on the 24th August 1906. Both the Courts below have held that the application under section. 167 having been made more than a year after the date of sale, the incumbrance was not annulled and accordingly dismissed the suit. The Courts below held that the words "date of sale" mean the date on which the sale actually takes place and not the date of the confirmation of the sale.

3. It may be pointed out that the learned Subordinate Judge is in error in stating that in the present case no objection seems to have been made to the sale itself.

4. The plaintiffs have appealed to this Court. The first contention raised on behalf of the appellants is that the defendants Nos. 1 to 4 who claim to be the

incumbrancers were parties to the rent-suit and are bound by the decree in the rent-suit and the sale held in execution thereof and that as such the question of annulment of incumbrance does not arise. This point, however, was not raised in the Court below and there are not sufficient materials on the record for deciding the question. Besides, the plaintiffs proceeded in the Courts below on the ground that there was an incumbrance which had been annulled u/s 167, Bengal Tenancy Act. I, therefore, overrule the first contention.

5. The next contention is that the words "date of sale" in Section 167 mean the "date of confirmation of sale" and that, at any rate, the defendants having themselves taken proceedings for setting aside the sale should not be allowed to say that the "date of sale" was the date on which the sale was actually held and not the date on which the sale was confirmed, and reliance is placed upon the case of *Taibatanesa Bibi v. Provubati Dassi* 4 Ind. Cas 750 : 10 C.L.J. 640.

6. I do not think it necessary to decide, in the present case, whether the words "date of sale" in Section 167, Bengal Tenancy Act, mean the date of confirmation of sale, because it seems to me that the present case should be decided in accordance with the view taken in the case cited above. It was held, in that case that a person who claims to hold incumbrances and who disputed in a previous litigation the right of the purchaser of the entire holding under the sale for arrears of rent and thus denied the right of the purchaser to issue notices to annul the incumbrances, involving the purchaser of the entire holding in litigation to prove his title, cannot, by reason of his having raised the dispute and caused the delay, in equity, be allowed subsequently to say that the title under which the purchaser claimed to issue the notice was perfected for the purposes of Section 167 of the Bengal Tenancy Act on the date of his actual purchase and not on any subsequent date such as the date of the confirmation of his title by the decision in the previous litigation.

7. The above observations apply to the facts of the present case. In that case, as in the present, the defendant applied to set aside the sale" under the provisions of Section 311 of the CPC and the application u/s 167 was made within one year from the date of the confirmation of sale.

8. I accordingly hold that the application u/s 167 of the Bengal Tenancy Act was in time and the incumbrance was annulled.

9. The decrees of the Courts below are set aside and the suit is decreed with costs in all Courts.