
(1944) 11 CAL CK 0005
In the Calcutta High Court

Gobinda Chandra Roy and on his death Nirmal Chandra Roy and Others APPELLANT

Vs

Jogindra Nath Roy Bahadur, a ward of Court shebait to Sree Sree Gobinda Deb Bigrha Thakur and Another RESPONDENT

Date of Decision : 29-11-1944

Acts Referred:

Bengal Tenancy Act, 1885 — Section 88

Citation : AIR 1945 Cal 325

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—These appeals are by the judgment-debtor. The question involved is whether the decree should be executed under the provisions of chap. 14, Ben. Ten. Act or the provisions of the Civil Procedure Code. On an application by the cosharers of the appellant u/s 88, Ben. Ten. Act, the rent was distributed although the lands were not partitioned. The objection taken by the appellant is that the effect of such distribution is to make the decrees money decrees with the result that they can only be executed as such. As a result of the distribution made the appellant has become the sole tenant of the decree, holder. It would be impossible to implead the representatives of the other two-third share of the original tenancy. It would be rather strange if the law made it impossible for the landlord in such circumstances to obtain a rent decree.

2. Two arguments were advanced in support of the appeals: (1) that there cannot be a tenure comprising an undivided interest in the land and (2) that in execution proceedings under chap. 14 an undivided share cannot be brought to sale. No authority has been cited in support of the former proposition. There is nothing in the definition of a tenure in Section 3 (18) or in the provisions of Section 5 (1), Ben. Ten. Act, to support it. Indeed, as this is a tenure, there is not even any inconvenience resulting from the order made u/s 88. The considerations which led the Court to hold that an undivided share could not be comprised in a "holding" as originally defined have no application to a tenure.

The second argument falls with the first. Under chap. 14 the decree-holder may sell the tenure. The other original two-third share no longer forms part of it. As soon as it is held that the interest of the judgment-debtor is a tenure within the meaning of the Act there is nothing which can prevent the decree-holder from bringing it to sale under chap. 14. The appeals are dismissed with costs hearing fee, one gold mohur in each case.