

(1912) 07 CAL CK 0061
In the Calcutta High Court

Gobinda Sundar Singh Chowdhuri and Another

APPELLANT

Vs

Chand Meah and Others

RESPONDENT

Date of Decision : 26-07-1912

Acts Referred:

Citation : 16 Ind. Cas. 202

Hon'ble Judges : Sharfuddin, J;Coxe, J

Bench : Division Bench

Judgement

1. This was a Rule calling upon the judgment-debtor and the depositor to show cause why the order complained of in the petition should not be set aside on the ground that the depositor was not a person having in the holding an interest voidable on the sale. The order complained of runs as follows: "One Chand Meah applies for depositing the claim in Court. He may deposit the claim within two days." We are informed that this application was presented u/s 171 of the Bengal Tenancy Act. If that is so, it cannot be disputed that in passing this order the Munsif acted with material irregularity in the exercise of his jurisdiction. He made no inquiry whatever apparently into the question whether the depositor had or had not any interest which would be voidable on the sale and he came to no decision upon the point. The learned Vakil for the petitioner has relied on the case of Nalini Behari Roy v. Fulmani Dasi 13 Ind. Cas. 487 : 16 C.W.N. 421 : 15 C.L.J. 388 as an authority for showing that in any case the depositor had no right to make the deposit. But clearly it would be altogether premature to express any opinion whether or not this decision is applicable. No inquiry whatever seems to have been made and for all that appears to the contrary in the Munsif's order, the petitioner may be an entire stranger to the property in suit.

2. It has been argued that we cannot interfere in revision because the order is appealable and our attention has been drawn to the case of Hira Lal Ghose v. Chundra Ranto Ghose 26 C. 539 : 3 C.W.N. 403 and other cases following that decision. That decision, however, does not help the opposite party in the least. It was held in that case that where the original application was u/s 244 of the Code

of Civil Procedure, an appeal would be even though the appellant might not be a party to the suit. But here the original application was made by a person who was not a party to the suit, and so, clearly, it did not come within the provisions of Section 244, now Section 47 of the Code.

3. It has also been argued that the petitioner should have gone to the District Judge for revision under the provisions of Section 153 of the Bengal Tenancy Act. It is not perfectly clear that the District Judge has jurisdiction in the matter; but whether he has or not, on which point we express no opinion, it would obviously be inadvisable, in the case of an order so patently wrong as this, to send the petitioner to any other Court to seek relief which this Court is certainly able to give him. The Rule must, therefore, be made absolute and the case will go back to the Munsif to be dealt with in accordance with law. If the application comes within Section 171 of the Bengal Tenancy Act, the Munsif must decide whether or not he has an interest which would be voidable on the sale. It has been suggested that the deposit might have been made under some other section. If that be so, it would then be incumbent upon the Munsif to decide whether or not the opposite party was entitled to the benefit of that section. But, in any case, the opposite party cannot be allowed to make the deposit unless the question, whether he has or has not any right to make it, is decided.

4. The petitioners are entitled to their costs, the hearing fee being assessed at one gold mohur in each case.

5. This judgment governs the other Rules.