

(1902) 07 CAL CK 0004

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 822 of 1899

Haradhan Chatteraj

APPELLANT

Vs

Kartik Chandra Chattopadhyaya and Others and Mahandeb Roy
and Others

RESPONDENT

Date of Decision : 02-07-1902

Acts Referred:

Citation : (1902) 07 CAL CK 0004

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit for arrears of rent and the only questions raised before us on behalf of the Appellant who was Defendant No. 1 in the Court below are, first, whether the Court of Appeal below was right in holding that the portion of the rent that was payable in cash was rupees six and annas four; and, second, whether the lower Appellate Court was right in holding that the Defendant No. 1, who was the purchaser of the tenure or holding at a sale for arrears of rent, was liable for the rent of a certain period anterior to the date of his purchase. Upon the first question it is argued for the Appellant that the Court of Appeal below is wrong in law in holding that the Appellant is bound to pay the money-rent at the rate claimed in the plaint, because that was the rate mentioned in the sale proclamation and he must be taken to have purchased the tenure or holding on the understanding that rent was payable at that rate; and in support of this argument the case of Alim v. Satis Chandra Chaturdhurin ILR 24 Cal, 37 (1896) is relied upon. Perhaps the principle laid down by the learned Judge below in his judgment, that when a landlord brings an occupancy holding to sale for arrears of rent, alleging that rent is payable for the holding annually at a certain rate, the auction-purchaser is bound to pay rent at that rate, even though it may be in excess of the rate at which rent was payable by the defaulting tenant, may not be correct in its broad generality, but it is unnecessary to consider this point, seeing that the question as to the rate at which the money-rent is payable is concluded in this case by the finding of fact arrived at by the lower Appellate Court that the Defendant No. 1 agreed to pay

the money-rent at the rate claimed.

2. Upon the second question, the learned vakil for the Appellant contends that the auction-purchaser is liable only for rent falling due subsequent to his purchase, but is not liable for rent due for any antecedent period; and in support of this contention the case of Faez Rahaman v. Ram Sukk Bajpai I. L. R. 21 Cal. 169 (1893) is relied upon. The contention on behalf of the Appellant on this point would have been correct had it not been for the fact that the tenure or holding was sold with a notice that it was saddled with liability for arrears of rent for the years 1299 to 1301, B. S. This fact is admitted by the Defendant No. 1 in paragraph 6 of his written statement, and the sale certificate shows that the sale took place with a notification to that effect. That being so, the reason for the rule laid down in the case of Fan Rahaman v. Ram Sukh Bajpai ILR 21 Cal. 169 (1893) just referred to, does not hold good in this case. To say that notwithstanding that the Defendant No. 1 purchased the tenure or holding subject to the notification referred to above, he is not liable for the arrears in question would be to make him a gainer at the expense of the defaulting tenant.

3. It is argued for the Appellant that the law does not provide for the sale of a tenure or holding subject to any notification of the kind as to liability for past arrears such as is relied upon in this case. That may be so, but still that does not take away the effect of the notification, which must have had some effect in controlling the bids of intending purchasers. The result then is that this appeal fails, and must be dismissed with costs.