
(1945) 05 CAL CK 0017
In the Calcutta High Court
Case No : Appeal No. 308 of 1943

Harendranath Chaudhuri

APPELLANT

Vs

Sakiraddi Gazi and others

RESPONDENT

Date of Decision : 28-05-1945

Acts Referred:

Citation : (1945) 05 CAL CK 0017

Final Decision : Allowed

Judgement

Henderson, J.—This appeal is by the decree-holder and it raises a point under S. 168A, Ben. Ten. Act. The appellant is now seeking to sell the property other than the holding in execution of a decree for rent. Certain facts require to be noted. The appellant's cosharer obtained a rent decree for his share of the rent in Rent Suit No. 98 of 1933 framed in accordance with the provisions of S. 148A, Ben. Ten. Act, and purchased the holding in execution on 4th February 1937. The present decree is for rent claimed by the appellant for his share of the rent for the years 1342 to Pous Kist of 1343 B. S., i.e., the period prior to the purchase by the appellant's cosharer. The question accordingly that now arises for determination is whether the term of the tenancy has expired within the meaning of the proviso to S. 168A (1) (a). It is common ground that the case comes within S. 22 (2), Ben. Ten. Act. Mr. Maiti relied upon the decision in 33 C.W.N. 1081 Abhoy Charan Modak Vs. Ram Sunder Shaha and Others, , in which it was held that the decision of the Judicial Committee in 29 C.W.N. 34 Midnapore Zemindary Co. Ltd. v. Naresh Narayan Roy ("24) 11 A I.R. 1924 P.C. 144 : 51 Cal. 631 : 51 I.A. 293 : 80 I.C. 827 : 29 C.W.N 34 (P.C.), has not by implication overruled the decision of the Full Bench in 32 Cal. 386 Ram Mohan Pal v. Sheik Kachu ("05) 32 Cal. 386 (F.B.). I may say that I respectfully agree with that decision; but in any case I should be bound to follow it. The question that there arose for consideration was the meaning of the words

if the occupancy right in land is transferred to a person jointly interested in the land as proprietor it shall cease to exist.

It was held that this does not mean that the holding itself ceases to exist. All these decisions, however, throw no light on the present matter. The question for decision now is whether the term of the tenancy has expired in view of the subsection in its present form.

2. It appears from the terms of S. 168-A that the intention of the Legislature was that the decree-holder should not be allowed to fall back on other property of the judgment-debtor when, speaking broadly, the tenancy was or might have been available for sale. On the other hand, when the tenancy is not in existence, the decree-holder is still permitted to attach and sell other property.

3. The present case is governed by the proviso inasmuch as the purchase was made at a sale in execution of a rent decree. As a result, the appellant's cosharer holds the land as a proprietor and is liable to pay the appellant a fair and equitable sum for the use and occupation of the same. As a result there is no longer either a tenant or rent. The sum formerly paid as rent is merely a guide as to what would be fair and equitable compensation for the occupation of the land. If there is neither tenant nor rent, it is difficult to contend that the tenancy still exists. The only reasonable conclusion to draw from this is that the term of the tenancy has expired.

4. The appeal is allowed, the orders of the Courts below are set aside and I direct that the respondent's objection be dismissed. I make no order as to costs.