

(1887) 06 CAL CK 0001
In the Calcutta High Court

Hiru Ram Pandey and Others

APPELLANT

Vs

Modhusudun Nath Tewari

RESPONDENT

Date of Decision : 06-06-1887

Acts Referred:

Chota Nagpur Landlord and Tenant Procedure Act, 1879 — Section 124

Citation : (1898) ILR (Cal) 396

Hon'ble Judges : Tottenham, J; Norris, J

Bench : Division Bench

Judgement

Tottenham and Norris, JJ.—We are of opinion that this appeal must be allowed, and that the Court of First Instance was right in dismissing the suit.

2. It was brought to recover 12 annas of a jagir named Kulherpat, possession of the whole of which has come into the hands of the defendant by transfer from an auction-purchaser under a decree for arrears of rent. It is alleged that the jagir when the sale took place was the joint property of four brothers, and that nothing passed by that sale beyond the right, title and interest of one of the brothers, Hiru Ram Pandey, against whom only the rent decree had been obtained. The plaintiffs sue to get back the other three equal shares.

3. It appears that the jagir is one governed by the provisions of Bengal Act I of 1879--the Chota Nagpur Landlord and Tenant Act; that no sale of the tenure itself could take place under a decree for arrears; but that with the consent of the Commissioner the right, title and interest of the judgment-debtor could be and was sold.

4. The Lower Appellate Court thought it must be held that the consent of the commissioner was limited to the sale of the individual right, title and interest of Hiru Ram, and that the sale conveyed nothing more. We think that the Commissioner's sanction u/s 124 must be held to apply to all the right, title and interest represented by the judgment-debtor Hiru Ram in the decree passed against him. There is no question as to his having been sued as representing the

full ownership of the jagir. The arrears claimed had accrued in the lifetime of the father of the four brothers, and the suit was brought against the eldest of the brothers who held possession as manager, and who was the sole registered ilakadar or person held responsible in the zemindary books. The decree, undoubtedly, related to the arrears due in respect of the whole tenure, and the judgment-debtor was undoubtedly sued as being in possession of the whole tenure. His right, title and interest sold would, under the circumstances of the case, and by the incidents attaching to such tenures in Chota Nagpur, include the right, title and interest of any person claiming such jointly with him, and inseparably united with his own.

5. Many authorities have been cited before us on either side in support of the opposite views taken by the parties of what really passed by the sale. (sic) it is enough to say that the circumstances of the particular case must determine this question, and that we are satisfied that in this case the sale sanctioned by the Commissioner disposed of the whole right, title and interest (sic)ented by Hiru Ram.

6. The decree of the Lower Appellate Court is, therefore, set aside, and that of the first Court must be restored with costs.