

(1921) 02 CAL CK 0004
In the Calcutta High Court

Jadu Nath Mandal and Others

APPELLANT

Vs

Rai Charan Koyal and Others

RESPONDENT

Date of Decision : 25-02-1921

Acts Referred:

Citation : 64 Ind. Cas. 186

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—The following are the facts as found in this case. The plaintiffs were the purchasers of a non-transferable occupancy holding, which was sold on the 10th of September 1906 in execution of a money decree. After their purchase, they obtained recognition from the owner of a 5/12ths share of the landlord's interest. They brought the present suit for establishment of their title to and confirmation of possession of the whole of the holding. The suit was contested by the first defendant, who is one of the co-sharer landlords who have not recognized the plaintiff's purchase. The defence that he set up was that the owners of the remaining 7/12ths share had obtained some right to the holding by purchase at a sale in execution of a decree in a suit brought against the alleged heir of the original tenant. But the findings of both the lower Courts are that these co-sharer landlords obtained nothing by that purchase, since the decree was obtained fraudulently and also against a person who was not the heir of the original tenant. It is contended, on these findings, that the plaintiff's suit should have been decreed in full, on the ground that the contending defendant could not raise the question of transfer-ability. Reliance is placed on the case of Aeynuddin Nasya v. Srish Chandra Banerji 11 C.W.N. 76 and Haro Chandra Poddar v. Umesh Chandra Bhattacharjee 5 Ind. Cas. 39 : 14 C.W.N. 71 : 11. C.L.J. 20. It seems to me from the facts found in the present case that these rulings cannot be made applicable to this case. The defendant No. 1, whose plea of purchase has entirely failed, can only defend the suit on his right as a co-sharer landlord. I am not aware that it has ever been held that a co-sharer landlord, as such, cannot raise a plea of non transferability in a suit brought

against him by the purchaser of a non-transferable occupancy holding. Though no ruling has been cited, this is evidently the view taken by both the lower Courts and I am not prepared to hold that they are wrong. The appeal fails and is dismissed with costs.