

(1892) 01 CAL CK 0002
In the Calcutta High Court

Jagan Nath Gorai and Others

APPELLANT

Vs

Watson and Company

RESPONDENT

Date of Decision : 22-01-1892

Acts Referred:

Citation : (1892) ILR (Cal) 341

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

Bench : Division Bench

Judgement

Tottenham and Banerjee, JJ.—This and two similar appeals between the same parties have been heard together; the suits having been governed by one judgment in the Lower Appellate Court. That Court dismissed the suits as being barred by Section 244 of the CPC under a ruling by a Full Bench of this Court in the case of Mohendro Narain Chaturaj v. Gopal Mondul ILR 17 Cal. 769. This second appeal is based on the contention that the Full Bench ruling is not applicable to this case, because the ground on which this suit was brought is not within the scope of Sections 244 and 312 of the Code. By Section 312 the appellants probably meant 311.

2. And as regards two of the plaintiff-appellants it is contended that they were not parties to the previous suit and decree, and cannot be barred from this suit by the section quoted by the Lower Appellate Court.

3. The suit was brought to set aside a sale held in execution of a decree for arrears of rent against two of the plaintiffs. The other two plaintiffs are brothers of plaintiff No. 2, but were not made parties to the suit for rent.

4. After the sale had taken place the two judgment-debtors made an application u/s 311 to have it set aside, but failed to obtain an order, and this suit was consequently instituted by all the plaintiffs as being all interested in the land sold. The decree-holders in the rent suit were themselves the purchasers at the sale in execution; and we think, therefore, that as between them and the plaintiff's 1 and 2 the questions now raised as to the propriety of the execution

of the decree by sale of the property and as to the suppression of the sale proclamation were questions which could, and ought to have been decided u/s 244. The principal contention now made on behalf of the plaintiff-appellants is that the decree did not warrant any sale at all, as it provided for its satisfaction out of money already deposited in Court by the judgment-debtors. It is clear that this is a matter which comes within the purview of Section 244, and that that section prohibits a separate suit by parties to that decree. At one time it was not clearly understood that after a decree had been fully executed the Court could re-open the matter u/s 244 and set aside a sale already confirmed, in which the decree-holder was purchaser; but the Full Bench case of Mohendro Narain Chaturaj v. Gopal Mondul ILR 17 Cal. 769 seems to us to lay down that there is no other remedy open by separate suit to the judgment-debtor, even though by fraud he may have been kept from knowledge of the execution proceedings until after the confirmation of a sale improperly obtained. We think that the Lower Appellate Court took a correct view of the Full Bench ruling, and that, following it, as he was bound to do, the District Judge was right in holding that as regards plaintiff's 1 and 2 this suit was barred by Section 244.

5. But in our opinion the District Judge was wrong in holding that the plaintiff's 3 and 4 were not competent to sue, at least to have it declared that the sale in question did not affect their rights.

6. It is true that as heirs of a deceased registered tenant, who had not got themselves registered in the landlord's sherista, they may not be able to question the decree obtained for arrears of rent, yet that fact does not preclude them from contesting a sale fraudulently obtained under colour of that decree, if it be true that the decree did not warrant any sale at all in execution of it.

7. We think, then, that the appeal of plaintiffs 1 and 2 must fail, and that plaintiff's 3 and 4 are entitled to succeed in this appeal.

8. We were asked to treat the suit as an application u/s 244 so far as regards plaintiffs 1 and 2; but we cannot make it an application under that section as to two of the plaintiffs and a regular suit as to the other two.

9. The result is that, so far as the appellants 1 and 2 are concerned, the appeal is dismissed with costs; and that we make a decree in favour of the appellants 3 and 4, setting aside the decree of the Lower Appellate Court as against them, and sending the case back to that Court that it may decide the case upon the merits as regards these plaintiffs. Costs will abide the result.

10. This order will apply also to appeals 1435 and 1436.