

(1951) 08 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 346 of 1951

Jagdishpur Zamindari Co. Ltd. and Others	APPELLANT
Vs	
Sitaram and Others	RESPONDENT

Date of Decision : 14-08-1951

Acts Referred:

Bihar Tenancy Act, 1885 — Section 170, 170(1), 25A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : AIR 1952 Patna 7

Hon'ble Judges : Shearer, J

Bench : Single Bench

Advocate : Kanhaiyali, for the Appellant; N.N. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Shearer, J.—The contention put forward by the objector was that the land which was attached had ceased to constitute one occupancy holding, and, by reason of the provisions contained in Section 25A of the Bihar Tenancy Act, now constituted several holdings, and that so much of it as constituted a holding belonging exclusively to himself and in which the judgment-debtor had no interest whatever, was not liable to be attached and sold. In the circumstances, the application under Order XXI Rule 58 was in my opinion, clearly maintainable. Section 170 of the Bihar Tenancy Act is a bar only when it is admitted that the land which has been attached constitutes a holding and arrears of rent are due in respect of it. In "Deonandan Prasad v. Pirthi Narayan" 11 Pat 790, Dhavle, J., after a careful review of the decisions, observed : "The section presupposes a rent decree and it has been repeatedly held that a claim may be made under Order XXI, Rule 58, on the ground that the decree is not a decree of the kind presupposed in the section. Claims have, for instance, been allowed where it was shown that the subject-matter of the suit was not a tenure or holding, or that the decree was not a rent decree because the landlord had brought his suit in respect of more than one tenure or holding." The learned Advocate for the

petitioner relied on Harihar Prasad and Another Vs. Prasad Mahton and Others, . That decision is not, however, in point, and the reasoning of Dhavle, J. in "Deonandan Prasad v. Prithi Narayan" 11 Pat 790, was approved and followed. The application must be dismissed with costs. The hearing fee is assessed at one gold mohur.