

(1895) 05 CAL CK 0012
In the Calcutta High Court

Janardhsn Ganguli and Others

APPELLANT

Vs

Kali Kristo Thakur and Another

RESPONDENT

Date of Decision : 07-05-1895

Acts Referred:

Bengal Tenancy Act, 1885 — Section 174

Citation : (1896) ILR (Cal) 393

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

Bench : Division Bench

Judgement

Macpherson and Banerjee, JJ.—This is a rule calling upon the other side to show cause why the order of the Munsif of Barisal, setting aside a sale u/s 310A of the Code of Civil Procedure, should not be set aside, and the grounds upon which the petitioner contends that that order should be set asides are two: First, that Section 310A of the CPC has no application to this case, as the sale here was a sale of a tenure for arrears of rent under the provisions of the Bengal Tenancy Act; and, second, that the order of the Munsif is wrong, because it was made without any notice to the auction-purchaser, and without taking any evidence to show that the petitioner had any interest in the Immovable property that has been sold.

2. In support of the first ground the learned Vakil for the petitioner relied upon the words "sold under this chapter" in Section 310A as showing that the application of that section is limited to sales held under chapter XIX of the Code of Civil Procedure, and that it had no application to the sale of a tenure in execution of a decree for its own arrears, such flatter description of sale being held under the provisions of chapter 14 of the Bengal Tenancy Act, which contains several provisions applicable to such sale, and differing from the corresponding provisions of the Code of Civil Procedure. We do not think that this contention is sound. Section 143 of the Bengal Tenancy Act, Sub-section 2, enacts that, subject to rules made by the High Court, and subject also to the other provisions of that Act, the CPC will apply to all suits between landlord and

tenant; and the several provisions of chapter XIV of the Bengal Tenancy Act relating to sales for arrears of rent indicate that it is the provisions of the CPC that form the general ground-work of the law relating to sales under the Bengal Tenancy Act, subject only to such modifications as are expressly laid down in chapter XIV of the Tenancy Act, whereby certain additional provisions are enacted with reference to sales in execution of rent decrees, and certain provisions of the CPC are rendered expressly inapplicable to such sales; and there is nothing to indicate that Section 310A is intended not to apply to execution of rent decrees. On the contrary, we find that the proviso below ("section 2 of Section 174 of the Bengal Tenancy Act clearly assumes that muston 311 of the CPC is applicable to a sale for arrears appent; and Section 311 enacts that the decree-holder, or any person whose imoveable property has been sold under this chapter (that is chapter XIX of the Code of Civil Procedure), may apply to the Court to set aside the sale on the ground of material irregularity in publishing and conducting it, &c. This goes clearly to indicate that a sale of a tenure for arrears of rent is, in the contemplation of the Bengal Tenancy Act, none the less a sale under chapter XIX of the Code of Civil Procedure. It was further argued that, as the Bengal Tenancy Act contains a special provision in Section 174, which is very similar in its terms to Section 310A of the Code of Civil Procedure, if Section 310A. applies to sales in execution of rent decrees its provision may overlap those of Section 174 of the Bengal Tenancy Act, and this showa that the two sections were not intended simultaneously to apply to sales under the Bengal Tenancy Act. The answer to this objection is that where a case comes clearly under the special provisions of Section 174 of the Bengal Tenancy Act that section would apply to it; but where, as here, Section 174 is inapplicable by reason of the application not being made by the judgment-debtor, there is no reason why Section 310A should not apply. The Court below was therefore right in holding that Section 310A of the CPC was applicable to this case, and the first objection urged by the petitioner must fail.

3. The second objection of the petitioner is entitled to prevail. The sale was set aside by the Munsif without notice to the auction-purchaser, and without any materials to show that the applicant u/s 310A was a person whose Immovable property had been sold; or, in other words, that he had any interest in the Immovable property that has been sold. The petitioner before us in his affidavit states that he had no notice, and that he has been prejudiced by reason of this want of notice; and the learned Vakil for the opposite party very properly does not resist a remand. The case must therefore go back to the Court below in order that it may, after notice to the auction-purchaser and decree-holder, determine the question as to whether the applicant u/s 310A is a person whose Immovable property has been sold.¹

4. Under the circumstances we make no order as to costs.

1 This case has been followed in Krishnadhan Nath v. Damayanti Devi, Civil Rule No. 1643 of 1895, decided by Macpherson and GORDON, JJ., on 19th December

1895; and in Behary Lall Seal v. Russick Chunder Pal, Civil Rule No. 2269 of 1895 decided by Trevelyan and Bevrelet, JJ., on 18th February 1896.-Ed. Note.