

(1922) 01 CAL CK 0031
In the Calcutta High Court
Case No : Civil Rule No. 613 of 1921

Jatiram Gayan Das

APPELLANT

Vs

Dino Nath Samantha and other

RESPONDENT

Date of Decision : 31-01-1922

Acts Referred:

Citation : (1922) 01 CAL CK 0031

Judgement

Greaves, J.—This rule must be discharged. The learned Subordinate Judge has remanded to the Munsif for hearing an application by the judgment-debtor to set aside a sale. The application to set aside the sale was heard ex Parte. The learned Subordinate Judge says that the evidence is insufficient. Now the point in respect of which the rule was granted is that by virtue of the provisions of S. 153 of the Bengal Tenancy Act no appeal lay as the amount claimed was under Rs. 50 in value. The only question that arises is whether the matter falls within the explanation given to S. 153 or not.

2. The Full Bench case of Kali Mondal v. Ramsarbaswa Chakravarty (1905) 32 Cal 957 = 9 C.W.N. 721 = 1 C.L.J. 476, decided that in a case of this nature an appeal lay. After that decision by the Amending Act of 1907 the present explanation to S. 153 was introduced. Now, since the introduction of that explanation Mr. justice Chatterjee and Mr. Justice Mullick have held in the case of Nabin Chandra Chaudhri v. Bepin Chandra Chaudhri (1915) 19 C.W.N. 951 = 29 I.C. 308 = 22 C.L.J. 224. that where the application is based on fraud an appeal lies notwithstanding the explanation to S. 153. It is true, that Mr. Justice Mullick in that case expressed some doubt whether an appeal would lie in the case of an irregularity tainted by fraud but where actual fraud had not been established. I find it rather difficult to follow the distinction which Mr. Justice Mullick made. But what I have got to see in this case is whether the Munsif's order was made on the ground of irregularity in the sale or on the ground of fraud and irregularity. If his finding amounts to a decision that there were both fraud and irregularity then I think the matter is covered by the decision in Nobin Chandra, Chaudhari v. Bepin Chandra (1915) 19 C.W.N. 951 = 29 I.C. 308 = 22 C.L.J. 244. Now the

matter was heard before the Munsif originally ex parte and as the learned Subordinate Judge says the evidence is meagre and unsatisfactory. But the application was based on the ground of fraud and material irregularity. I feel no doubt myself after reading the judgment-debtor's evidence and the order of the Munsif that fraud was an element which entered into the Munsif's decision in setting aside the sale. This being so I think the case is covered by the decision already referred to (reported in 19 C.W.N. 953). I think if you have both fraud and irregularity established, the fact they are coupled together does not exclude an appeal. I think that unless you have irregularity alone and irregularity untainted by fraud an appeal lies.

3. I think the order of the Subordinate Judge is correct and the rule accordingly must be discharged with costs. Hearing fee one gold mohur.