
(1926) 01 CAL CK 0016
In the Calcutta High Court

Jogendra Nathkar

APPELLANT

Vs

Sudhir Chandra Roy and Others

RESPONDENT

Date of Decision : 26-01-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 170
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : 95 Ind. Cas. 838

Hon'ble Judges : Cuming, J

Bench : Single Bench

Judgement

1. This is a Rule which was granted by my learned brother Mr. Justice Chakravarti calling upon the opposite party to show cause why the order of the Second Munsif of Tamluk allowing a certain deposit to be made u/s 170 of the Bengal Tenancy Act should not be set aside.

2. The facts would appear to be these: The applicant who has obtained this Rule is the landlord. He obtained a decree against the opposite party No. 4 for a sum of Rs. 257-13-0 on the 28th July 1921. The amount not being paid, the landlord tried to execute the decree and the 17th of March 1925 was fixed for the sale. Previous to this property being put up to sale, the opposite parties Nos. 1, 2 and 3 applied to deposit the decretal amount u/s 170 of the Bengal Tenancy Act. The application was opposed by the landlord on the ground that the opposite parties Nos. 1, 2 and 3 were not entitled to make the deposit.

3. The learned Munsif found that the opposite parties Nos. 1, 2 and 3 were co-sharers of the judgment-debtor, although they had not been recognised by the landlord. Hence he held that they were entitled to make the deposit.

4. The landlord moved this Court in revision and has obtained this Rule.

5. As far as I can see, the present case does not fall within the purview of Section 115, C. P. C. Section 115 provides that the High Court may interfere in revision where the lower Court exercised a jurisdiction not vested in it by law or

failed to exercise a jurisdiction so vested or acted in the exercise of its jurisdiction illegally or with material irregularity. Now what has the learned Munsif done? He has decided that the co-sharers of the judgment-debtor although they were not parties to the decree and were not recognized by the landlord are entitled to make the deposit u/s 170, (Clause 3) of the Bengal Tenancy Act. It is not contended that the learned Munsif had no jurisdiction to decide this question. He had jurisdiction and he exercised his jurisdiction and determined that these opposite parties Nos. 1, 2 and 3 had the right to deposit the money. He may have been entirely wrong in coming to this conclusion, although I may point out incidentally that to support his finding there is a decision of this Court in the case of Behary Lal Pan v. Fakir Chandra, Roy 12 C. W. N.231). But even if he were wrong in his decision, he was clearly at the worst guilty of an error of law. But by wrongly deciding a point of law, it is difficult to see, how he could be held to have exercised a jurisdiction not vested in him or failed to exercise a jurisdiction so vested or to have acted in the exercise of his jurisdiction illegally or with material irregularity. I am, therefore, of opinion that the present case does not fall within the purview of Section 115, C. P. C. and the Rule must, therefore, be discharged with costs. Hearing fee two gold mohurs.