

**(1910) 04 CAL CK 0041**  
**In the Calcutta High Court**

Jogonath and Others

APPELLANT

Vs

Syed Mohi-ud-din Mirza and Others

RESPONDENT

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**Date of Decision :** 28-04-1910

**Acts Referred:**

**Citation :** 6 Ind. Cas. 371

**Hon'ble Judges :** Sharf-ud-din, J; Brett, J

**Bench :** Division Bench

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### Judgement

1. The ancestors of the present appellants had a mortgage dated the 19th Aghran 1305 M. S., 3rd December 1897, executed in their favour by one Rahman Bixkhsh, the ancestor of the defendants second party, by which the putni mahal Kalughat was hypothecated for payment of a debt. The ancestors of the appellants brought a suit on the mortgage bond to recover the debt, and obtained a decree, and in execution of that decree, the putni mahal was put up to sale and was purchased by them on the 8th. March 1905. The sale was confirmed on the 15th May 1905. Meanwhile, the rent was due on the putni by the defendants, second party, to the defendants first party. The Zemindars, for the year 1312 M.S. had fallen into arrears and, in consequence, the defendants, first party, brought the putni to sale under Regulation VII.I of 1819 on the 15th May 1905/ The putni was sold and, after deducting the amount due as rent for 1312, there remained a surplus of its. 1,011-5, which was kept in deposit in the names of the defendants second party. The present suit was brought by the plaintiffs-appellants to recover that sum of money as representing the property which had been purchased by their ancestors in execution of the decree obtained on their mortgage. Under the provisions of Section 73 of the Transfer of Property Act, the charge, which the mortgagees had on the putni mahal, " was transferred after the sale to the sale-proceeds and the plaintiffs, therefore, claimed to be entitled to the sum of Rs. 1,011-5 as representing the charge which they had under their mortgage and the property they had purchased under their decree When the plaintiffs went to execute their decree, they found that the defendants, first party, landlords, had attached the money in execution of a decree obtained

by them for rent due in respect of the putni mahal for a period prior to 1312. The plaintiffs' case was that the defendants first party had no right to attach that sum of money for the arrears due prior to 1312.

2. The Court of first instance gave the plaintiffs a decree for Rs. 99-5 being the balance out of Rs. 1,011-5 which remained after deducting the sum claimed by the defendants first party as rent due to them for the period prior to 1312. The plaintiffs appealed to the lower appellate Court but the appeal was dismissed. The plaintiffs have now appealed to this Court.

3. The first question which we have to decide is whether the learned Judge was right in the interpretation which he has placed on Section XVII, Clause (3), of Regulation VIII of 1819, the Putni Regulation. The learned Judge appears to have held that, u/s XVII, Clause (3), of Regulation VIII of 1819, the Zemindars are entitled to the balance of the sale proceeds because the arrears were due for a year preceding the year for the arrears of which proceedings had been taken under the putni Regulation. That, however, does not appear to us to be a correct interpretation of the section. The section distinctly provides that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the Zemindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become, in fact, mere personal debts of the individual taluqdar and must be recovered in the same way as other debts by a regular suit in the Court." Section XVII, it may be mentioned, lays down the rules for the disposal of the proceeds of any sale made under the rules in this Regulation. In our opinion, it is clear that, under the terms of Clause (3) of Section XVII of the Putni Regulation, the landlords had no right to have the arrears of rent due for a period prior to 1312 paid out of the proceeds of the sale of the putni mahal. It has, however, been contended that, u/s 65 of the Bengal Tenancy Act, the landlords have the first charge on the tenure and that, in consequence, they are entitled to priority over the plaintiffs in recovering the money due as rent under that charge. For the appellants it has been argued that Section 65 of the Bengal Tenancy Act cannot be held to, give to the landlords the first charge on the sale proceeds of a palni mahal for arrears of rent due beyond those of the current year in which the sale took place or of the year which had expired if the sale took place at the commencement of the following year, inasmuch as, under the provisions of Section XVII of Regulation VIII of 1819, such antecedent balances are expressly declared to be recoverable only as personal debts of the landlord. In our opinion, this view is correct and, as we interpret Section XVII of Regulation VI.11 of 1819, Section 65 of the Bengal Tenancy Act gave to the defendants first party, the landlords, no right to recover the rent for the years previous to 1312 as being the first charge on the sale proceeds.

4. It has, however, been argued on behalf of the appellants that a different view

has been taken by this Court in the case of Peary Monan Mukhopadhyaya v. Sri Ram Chundra Bose 6 C.W.N. 794. There the learned Judges expressed the opinion that there was no conflict between Section 65 of Bengal Tenancy Act and Section 17, Clause (3), of the Putni Regulation. The facts of that case are different from those of the present case. In that, in the Orise referred to, the purchaser of the putni taluq had purchased it in execution of a rent decree whereas, in the present case, the taluq was sold Under the provisions of Regulation VIII of 1819. That case, therefore, can have no application to the present case. But we may observe at the same time that we regret we are unable to agree with the learned Judges who decided that case in holding that there is no conflict between Section 65 of the Bengal Tenancy Act and Section XVII, Clause (3), of Regulation VIII of 1819. In our opinion in a case like the present where the arrears of rent claimed are for balances due, as explained in Section XVII of the Putni Regulation for periods prior to the current year for which the arrears are due when the sale is held in the middle of the year or prior to the year preceding if the sale be held at the commencement of the following year, these balances must be treated as personal debts recoverable under the ordinary procedure for recovery of debts and not as rents recoverable under the provisions of the Tenancy Law and that, in such a case, the provisions of Section 65 of the Bengal Tenancy Act would not have any application. We, therefore, hold, disagreeing with both the lower Courts, that the plaintiffs are entitled to claim the surplus sale-proceeds as representing the mortgage-debt due to them and the property which they had purchased in execution of a mortgage decree and that the defendants first party, the landlords, have no right to recover from those sale proceeds the previous balances of rent as being a first charge on those proceeds. The result, therefore, is that the appeal is decreed, the judgments and decrees of both the lower Courts are set aside and the plaintiffs' suit is decreed with costs against the defendants first party in all the Courts.