
(1891) 05 CAL CK 0008
In the Calcutta High Court

Kabilaso Koer

APPELLANT

Vs

Raghu Nath Sakan Singh and Others

RESPONDENT

Date of Decision : 28-05-1891

Acts Referred:

Bengal Tenancy Act, 1885 — Section 174

Citation : (1891) ILR (Cal) 481

Hon'ble Judges : W. Comer Petheram, J;Beverley, J

Bench : Division Bench

Judgement

W. Comer Petheram, Kt., C.J.—This is a suit brought by the plaintiff against the defendant to set aside a sale on the ground that she is entitled to have it set aside under the provisions of Section 174 of the Bengal Tenancy Act, she having made the necessary deposit within the meaning of that section.

2. The Subordinate Judge dismissed the suit on two grounds, and we think that he was right in both. He, first of all, has considered that such a suit would not lie, and in that view we think he was right. Section 174 provides a particular means by which sales can be got rid of after they have been concluded and by which the purchaser at the sale can be compensated for loss, but it must be got rid of by order of the Court which made the sale. There is no doubt that if all the provisions of the law have been complied with, and the Court which made the sale refuses to set it aside, that order can be brought up to this Court in revision, but that is a different thing from saying that an independent suit will lie for that purpose, and we agree with the Subordinate Judge in thinking that such a suit will not lie. The right to have a sale set aside is not an abstract right which can be enforced by action against one person alone, but it is a right to call upon the Judge to set aside a sale, and if he does not do it, to bring his failure to do so to the notice of the Court, and therefore we think that upon that ground the Subordinate Judge was right, and the appeal upon that ground fails.

3. The Subordinate Judge also thinks that the provisions of Section 174 have not been sufficiently complied with so as to entitle the plaintiff to this relief in

whatever form it is sought for. In that also we agree with him; Section 174 provides that before a sale is set aside, the whole of the debt and the expenses and the damage which the purchaser has sustained shall be deposited in Court: the debt for payment to the decree-holder, the damage for payment to the purchaser. In this case the only thing which has been deposited in Court is the damage which is payable to the purchaser. The amount of the debt has not been deposited; but some person comes who says that he is the decree-holder, and admits that he has received the money. We think that that is not a compliance with the Act. We think that before a claim can be made for the protection of Section 174, the Court must have the money deposited in the Court it self, so that the Court may know, of its own knowledge, that the provisions of the section have been complied with, and may not be driven to rely upon the evidence of other persons who may or may not be interested in the matter.

4. For both reasons then we think that the Subordinate Judge was right in the view he took of this case, and that this appeal must be dismissed with costs.