

(1918) 08 CAL CK 0002
In the Calcutta High Court
Case No : Rule No. 267 of 1918

Khogendra Bhusan Roy and Others

APPELLANT

Vs

Jatindra Nath Roy and Others

RESPONDENT

Date of Decision : 01-08-1918

Acts Referred:

Citation : (1918) 08 CAL CK 0002

Final Decision : Dismissed

Judgement

Teunon, J.—In this case in a suit framed under sec. 148A of the Bengal Tenancy Act, certain co-sharer landlords obtained a decree for the arrears of rent due in respect of a certain tenure spoken of as a ganti. In execution of the decree, in proceedings taken under the provisions of Chap. XIV of the Act, the decree-holder landlord brought the tenure to sale and themselves purchased the same.

2. The sum realised was in fact insufficient to satisfy the decree.

3. The remaining co-sharer landlords next applied under Or. XXI, r. 90, of the Civil Procedure Code, to have the sale set aside.

4. Both the Courts below have held that the co-sharer landlords have no locus standi to make the application. Now the suit in which the decree was obtained having been framed in the manner provided in sec. 148A, under that section and also under sec. 158B, the decree has the force and effect of a rent-decree. This was the case of the decree-holders and it was further their case that by the sale the tenure passed to the purchaser. In that view they should not have been heard to say that their co-sharers were not interested in the results of the sale of the tenure, and in dealing with the case merely under the provisions of the Code of Civil Procedure, and without advertence to the Bengal Tenancy Act [see more particularly the proviso to sec. 169 (1)], the Courts below have seriously erred.

5. In this view it is unnecessary to discuss the other questions raised.

6. We set aside the decision of the District Judge and return the case to him and

order that he may hear and dispose of it on the merits.

7. Costs of this Rule will be costs in the case. We assess the hearing fee at two gold mohurs.

Cuming, J.

I agree with some hesitation. I am somewhat doubtful whether the present application falls strictly within the scope of sec. 115, C. P. C.