
(1912) 03 CAL CK 0023
In the Calcutta High Court

Kristo Das Laha and Others

APPELLANT

Vs

Jatindra Nath Basu and Others

RESPONDENT

Date of Decision : 05-03-1912

Acts Referred:

Bengal Tenancy Act, 1885 — Section 160(g)

Citation : 14 Ind. Cas. 145

Hon'ble Judges : Carnduff, J; Brett, J

Bench : Division Bench

Judgement

1. The present appeal arises out of a suit brought by the plaintiffs as mortgagees to enforce a mortgage executed in their favour by the defendant No. 1, who is a putnidar, by obtaining a decree against him jointly with the defendants Nos. 2 to 5, who are his landlords, and, in satisfaction of the decree, by selling up the putni tenure which, after the mortgage had been given, had been sold by the landlords in satisfaction of a decree for the recovery of arrears of rent and had been purchased by them. What appears to have happened is, that the defendant No. 1, the putnidar, after he had given the mortgage to the plaintiffs, defaulted in paying the rent due on the putni-tenure. In consequence, the defendants Nos. 2 to 5, the landlords, brought a suit under the Tenancy Act against the putnidar to recover the rent, and obtained a decree. Thereafter they sold up the putni-tenure in execution of the decree and purchased it themselves. By this sale, the claim for rent was apparently satisfied. The mortgagees, the plaintiffs in the present suit, seek to satisfy their claim under the mortgage by sale of the putni tenure, which is now in the bands of the landlords, and both the lower Courts have held that they are entitled to do so as they have a protected interest u/s 160, Clause (g), of the Bengal Tenancy Act.

2. The landlords, the defendants Nos. 2 to 5, have appealed, and the question which we have to decide is whether the plaintiffs are entitled to a decree for the recovery of the mortgage-debt against the landlords jointly with the mortgagor, and whether they can, in execution of that decree, sell up the putni-tenure which

has now passed into the hands of the landlords. For the appellants, reliance has been placed on the wording of Clause (g) of Section 160 of the Bengal Tenancy Act, and it is urged that the terms of the kabuliat given by the putnidar at the time of the Settlement, which the lower Courts have regarded as an express authority given to the putnidar by the landlords in writing to create mortgages, are, in fact, nothing of the sort, but that the recitals in the putni lease merely set out the ordinary incidents of a putni grant as laid down in Section 3 of the Putni Regulation ; and that, in fact, these recitals gave the putnidar no right which he had not under the Regulation. In this contention we agree. Even if the recitals could be regarded as an express authority within the meaning of Section 160 Clause (g) of the Bengal Tenancy Act, the effect of that section would certainly be subject to the saving provisions of Clause (e) of Section 195 of the same Act, which provides that " nothing in this Act shall affect any enactment relating to putni-tenures in so far as it relates to such tenures." We hold, therefore, that the mortgage created in favour of the plaintiff is not a protected interest within the meaning of Section 160 Clause (g) of the Bengal Tenancy Act.

3. At the same time, it is clear that, under the terms of the putni lease, the putnidar had a right to mortgage the putni-tenure; but that right was subject to the conditions imposed by Section 11 of the Putni Regulation. That section provides: "No transfer by sale, gift, or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the zemindar to hold the tenure of his creation answerable, in the state in which he created it, for the rent, which is, in fact, his reserved property in the tenure, except when the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zemindar." This, evidently, means an express authority apart from the condition of the lease, and it is not even suggested that any such express authority was obtained from the landlords in the present case. Thus, though the mortgagees, undoubtedly, would have had a right to discharge the landlords' claim for rent so as to save the property which was covered by their mortgage and so to save their security from sale for arrears of rent and after they had done so, to sell up the tenure in satisfaction of their claim under the mortgage; certainly, after they had allowed the property to be sold in the exercise of the indefeasible right of the landlords for recovery of the rent due on the tenure, they had no legal right to come forward and claim to be entitled to realise the mortgage debt by sale of the tenure, which had passed into the hands of the landlords and so be relieved from the burden of the arrears of rent. By their own default in failing to pay the rent, the security for the payment of their debt has passed out of the hands of the mortgagor and all that the mortgagees are, under the law, entitled to in the present suit is a personal money-decree against the debtor for the recovery of the mortgage-debt. The judgments and decrees of both the lower Courts are set aside and the suit of the plaintiffs is decreed with costs for the full amount of the debt against the defendant No. 1 personally and dismissed against the defendants Nos. 2 to 5. The appeal is decreed and the defendants Nos. 2 to 5 are entitled to their costs

in all the Courts against the plaintiff.