
(1952) 03 PAT CK 0004

In the Patna High Court

Case No : Letters Patent Appeal No. 18 of 1950

Lachhmi Narain Sahy and Another

APPELLANT

Vs

Ashrafilal Sah and Others

RESPONDENT

Date of Decision : 26-03-1952

Acts Referred:

Bihar Tenancy Act, 1885 — Section 13, 26A, 65

Citation : AIR 1952 Patna 428

Hon'ble Judges : Lakshmikanta Jha, C.J.; Reuben, J

Bench : Division Bench

Advocate : Rai B.B. Saran, for the Appellant; S. Anwar Ahmad, for the Respondent

Final Decision : Allowed

Judgement

Reuben, J.—This is an appeal by the plaintiffs against a decision of Shearer J. in second appeal modifying a decision of the Second Additional Subordinate Judge of Darbhanga, affirming in appeal a decision of the Third Additional Munsif of Darbhanga.

2. The facts of the case are simple and do not need to be stated at length. The property in suit, which is a holding in village Banouli, formerly held by the defendants second party under the defendant first party, was purchased by the plaintiffs on the 2nd October 1939 in execution of a mortgage decree obtained by their predecessors-in-interest against the defendants second- party. The sale was confirmed on the 16th November 1939 and the plaintiff's got delivery of possession on the 13th December 1942. The plaintiffs, however, did not deposit the landlord's fee and take steps for giving notice to the landlord as required by Section 26A read with Section 13 of the Bihar Tenancy Act. The landlord defendant first party himself purchased the holding on the 16th June 1944 in execution of a decree for arrears of rent obtained by him against two of the tenants, Lalji Sahni and Babue Sahni in Rent Suit No. 3829 instituted by him in the year 1940, that is to say, after the purchase by the plaintiffs. The plaintiffs

alleged that the decree in the rent suit and the sale in execution thereof were both vitiated by fraud. They also pleaded that the decree in the rent suit was merely a money decree. On these pleadings, they asked for a declaration that their interest in the property was unaffected and prayed for a decree confirming their possession or, in the alternative, for recovery of possession. The Munsiff decided the questions of fact in favour of the plaintiffs and decreed the suit. His finding on the facts and his decision were maintained by the lower appellate court. Shearer J. accepting the findings of fact which were binding on him, has held that the decree in the rent suit was only a money decree and, therefore, only the interest of Lalji Sahni and Babue Sahni passed by it. He has accordingly modified the decree of the Courts below by directing that the plaintiffs (should?) recover joint possession of the suit property to the extent of the interest of the original tenants other than Lalji Sahni and Babue Sahni.

3. The correctness of the proposition that, the decree in the rent suit being a money decree, only the interest of two judgment-debtors passed at the sale in execution of the decree is indisputable. The consequent direction made by his Lordship, however, seems to have been made under a misconception. From the statement of the facts of the case which I have given above, it is clear that by the plaintiffs' purchase in execution of the mortgage decree on the 2nd October 1939 the interest of Lalji Sahni and Babue Sahni passed to the plaintiffs. When, therefore, the decree in the rent suit was executed in 1944 as a money decree, the two judgment-debtors had no interest in that property in respect of which the sale held in that execution case could operate. The defendant first party, therefore, got nothing by his purchase.

On behalf of the respondent defendant first party, it has been urged that the arrears of rent in respect of which the decree against the two Sahnis was obtained related in part to the period prior to the plaintiffs' purchase. It has also been pointed out that the plaintiffs did not take steps according to law for the payment of the landlord's fee and the giving of notice to the landlord u/s 13 of the Tenancy Act. Those points might have been relevant if the decree obtained by the defendant first party had been a rent decree, so that he would have been in a position to proceed against the holding as such. Here, however, on the facts found the decree was a money decree and he could only proceed against the interest of the individual judgment-debtors. It has also been urged that the plaintiffs did not pray for consequential relief by setting aside the decree in the rent suit and the sale in execution thereof. There is no substance in the contention. Where the plaintiffs' interest in the property is not affected by the execution sale, it is not necessary for them to ask that the decree and the sale in execution thereof be set aside.

4. For these reasons I would allow the appeal, set aside the decree of the learned Judge and restore the decree of the courts below. The plaintiffs will get their costs throughout.

Lakshmikanta Jha, C.J.

5. I agree.