

(1878) 07 CAL CK 0007
In the Calcutta High Court

Laidley and Others

APPELLANT

Vs

Gunness Chunder Sahoo

RESPONDENT

Date of Decision : 15-07-1878

Acts Referred:

Citation : (1879) ILR (Cal) 438

Hon'ble Judges : Richard Garth, C.J.;McDonell, J

Bench : Division Bench

Judgement

Richard Garth, C.J.—The plaintiff's now appeal from this decision upon the ground that they had by law a right to sell the tenure under their second decree, and that they were not bound under the circumstances to give any notice of the decree to the defendant Gunness.

2. The respondent, on the other hand, contends that the plaintiffs were bound in equity to have given him notice of their decree, and that the Judge's decision founded on that obligation was correct.

3. But we are quite unable to discover how such an obligation arises. There is certainly no provision to that effect in the Rent Law, and no authority has been referred to by the learned pleader for the respondent, which in any way justifies his contention.

4. It is remarkable that, in the defendant's written statement, he never says from first to last that he was not aware of the plaintiffs' second decree; and the Munsif says that he does not believe he was ignorant of it. It certainly is very extraordinary, if he was so; because the decree under which the sale took place was obtained so long ago as the year 1872, and the defendant since that time has been constantly engaged in litigation with reference to the tenure, and had every possible opportunity of ascertaining all particulars respecting it.

5. But whether he knew of the decree or not, it is quite clear, that if he had done his duty by the plaintiffs, he would have ascertained the existence of the decree, and might by paying the amount of it have protected the tenure from sale.

6. He obtained his decree in the foreclosure suit so long ago as December 1874; and as soon as he had then perfected his title, he was bound by Section 26 of the Rent Law (Act VIII of 1869) to register his name in the plaintiffs' sherishta. If he had done his duty in this respect, and applied for registration, he would of course have been informed of the decree, and might have paid the amount of it. The law ought not to assist persons who place themselves in a difficulty by their own breach of duty, and we see no reason whatever why in this case the plaintiffs should have been bound to inform the defendant of that which, if he had complied with the requirements of the law, he would have discovered for himself.

7. It is clear that if the defendant had purchased Khetter Mohun's interest, he could have been in no better position than Khetter Mohun, and would have been bound to find out for himself what Khetter Mohun's obligations were and the defendant is virtually a purchaser from Khetter Mohun. He advanced his money upon security of the tenure, upon terms which, if the money was not repaid, enabled him to make the tenure his own, and he has availed himself of those terms. But he was bound of course to fulfil the requirements of his tenancy, and the obligations of the person under whom he claimed. If he had done this, he would not have been a sufferer.

8. We were referred by the respondent's pleader to the case of *Nobeen Kishen Mookerjee v. Shib Pershad Pattuck* (8 W.R. 96), for the purpose of showing that the zamindar is bound to recognize the title of a transferee of a transferable tenure, although he has not been registered. There is nothing in that case, however, which shows that the zamindar may not sell the tenure under a decree for rent as against such a transferee, and in point of fact that case does not in any way affect our present decision.

9. If it did, I confess, speaking for myself, that I entertain grave doubts as to the correctness of that decision: and I should much wish to have it re-considered.

10. The appeal is decreed, the judgment of the lower Appellate Court will be reversed, and that of the Subordinate Judge restored, with costs in this Court and in the Court below.