

(1918) 05 CAL CK 0059
In the Calcutta High Court

Maharaja Birendra Kisore Manikya Bahadur
Vs

APPELLANT

Baikuntha Chandra Deb

RESPONDENT

Date of Decision : 06-05-1918

Acts Referred:

Citation : 46 Ind. Cas. 474

Hon'ble Judges : Smither, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the plaintiff in a rent suit against the decision of the learned Officiating District Judge of Tipperah, dated the 23rd September 1915, affirming the decision of the Munsif of Kasba. The case is this. The defendant purchased the property at a sale in execution of a rent decree which the present plaintiff had obtained against a former tenant, and it may be taken that the plaintiff is probably responsible for the form of the sale proclamation. The property was sold on the footing that the rent was Rs. 28 odd. As a matter of fact, the rent had been enhanced at the date of the sale to Rs. 67 odd. The plaintiff, therefore, sued for rent at the rate of Rs. 67 odd. It is said that the property having been sold as being held at a rent of Rs. 28 odd, the plaintiff was precluded from suing the defendant for a larger rent. The question whether he is precluded or not depends on a variety of circumstances and those circumstances are, first of all, if the defendant believed the representation, that is, was the defendant misled into thinking by reason of the proclamation of sale that the property sold to him bore a rent of Rs. 28 odd instead of a rent of Rs. 67 odd. The case is not a simple one which one can deal with offhand, because there is a suggestion, if it does not come to more, that the defendant was the gamashta of the former tenant and must have known all about the terms on which the present holding was held. That is a case on which the learned Judge of the lower Appellate Court only held that it was not proved that the defendant knew as to whether the rent had been enhanced or not. But that is not the question. The onus of proving estoppel really falls upon the person setting up the estoppel. The present appeal must be allowed and the judgment and decree of the learned

Judge of the lower Appellate Court must be set aside and the case remanded to him to have the appeal re-heard. Costs will abide the result of the rehearing by the learned Judge of the lower Appellate Court.

Smither, J.

2. I agree.