
(1892) 04 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Original Decree No. 667 of 1891

Maharaja Pertap Udai Nath Sahi Deo

APPELLANT

Vs

Perdhan Mokand Singh and others

RESPONDENT

Date of Decision : 20-04-1892

Acts Referred:

Citation : (1892) 04 CAL CK 0002

Final Decision : Dismissed

Judgement

1. This is a suit for arrears of rent brought against the proprietor of a jagir and together with him are included as Defendants various persons said to have subordinate interests in the property, created by the jagirdar. An ex parte decree was passed against the jagirdar. Some of the other Defendants appeared and objected to any claim as against them, but no questions relating to these Defendants have been considered, nor have these Defendants been made liable by the decree. The Plaintiff not being satisfied with the ex-parte decree against the actual tenant has appealed to this Court asking that the tenants of the jagirdar, who have been made parties to this case, should also be made liable under the decree, in order that their interest might be sold at the same time as the jagir of the actual tenant. It has been stated that this is in accordance with the practice in Chota Nagpore, and as authority a circular issued by the Commissioner of Chota Nagpore has been read before us. The tenure in question, it is stated by the learned counsel for the Appellant, is one of the nature described in sec. 124 of Act I (B.C.) of 1879, the Chota Nagpore Landlord and Tenant Procedure Act. We cannot conceive on what principle any person other than the tenant himself or one who may be security for him can be made liable under a decree for arrears of rent. The Rules cited before us have not the force of law, and we may observe that it does not appear that they were so intended as they were headed " Rules issued for the guidance of officers subordinate to the Commissioner," whose signature they bear. It is unnecessary for us to express any opinion regarding the matters stated in those Rules. It is sufficient to say for the purposes of this appeal that no decree in this suit can be

passed except against the actual tenant, Defendant No. 1, and that sec. 124 does not contemplate a general sanction for sale of the right and title of any person in the particular under-tenure, but seems to require special orders for the sale of the right or title in any such tenure in each particular case. That is a matter which has not arisen in the present stage of the case, because it may be that in execution of the decree the judgment-debtor will pay the amount due to avoid any sale in execution.

2. The appeal is dismissed with costs.