

(1925) 02 CAL CK 0019
In the Calcutta High Court

Maharaja Shashi Kanta Acharjya Bahadur	APPELLANT
Vs	
Manu Sheikh	RESPONDENT

Date of Decision : 16-02-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153

Citation : AIR 1925 Cal 1064

Judgement

1. This Rule was obtained at the instance of the petitioner to set aside an order of the Subordinate Judge, dated the 16th February 1924. A decree for rent was obtained by the petitioner, the amount being under Rs. 50. In execution of the decree the petitioner brought the property to sale on the 20th February 1922 and himself purchased the property. The opposite party, who was a minor on the 9th April 1923, applied through his father as his natural guardian to set aside the sale, alleging in his application a fraudulent suppression of notices in respect of the sale. The matter came before the Munsif on the 29th September 1923 and he rejected the application to set aside the sale on the ground that there was no irregularity and that the application was barred by limitation. An appeal was preferred against the Munsif's order to the Subordinate Judge who reversed the order of the Munsif stating that on the evidence he was satisfied that the opposite party did not come to know of the order until the delivery of possession was made. This Rule was granted, as I have stated against the order of the Subordinate Judge.

2. Three points are urged before us, Firstly, it is stated that having regard to the provisions of Section 153 of the Bengal Tenancy Act, the Subordinate Judge had no jurisdiction to entertain the appeal against the order of the Munsif. Secondly, it is stated that the application which was made more than a year after the sale was barred by limitation unless fraud was shown which was not found by the Subordinate Judge, and there was a third point made that the application should have been made by the guardian ad litem of the infanta who had been appointed and not by his father as his natural guardian. It seems to us that the Rule must succeed on the first point, namely of jurisdiction. Section 153 of the Bengal

Tenancy Act provides that an appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where the decree or order, as here is passed by a Judicial Officer especially empowered by the Local Government to exercise final jurisdiction under this section and the amount claimed in the suit does not exceed Rs. 50. An appeal is allowable in case a decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting terms thereto or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant, and the explanation appended to the section, which was attached after the decision by this Court in the case of *Kali Mandal v. Ramsarbaswa Chakravarti* [1905] 32 Cal. 957, provides that a question as to the regularity of the proceeding in publishing or conducting a sale in execution of a decree for arrears of rent, is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto. It seems to us, therefore, that if this point had been taken it would be complete answer to the application. But it is urged before us that we should interfere on the ground that the opposite party has been prejudiced, because this point was not taken before the Subordinate Judge, it being urged that if the objection had been taken in that Court, the matter might have come before the District Judge under the proviso, which appears in Section 153. It seems to us that there is no substance in this contention, having regard to the term; of the proviso itself, and we do not think that the District Judge could have exercised any jurisdiction in the matter even if this point had been taken before the Subordinate Judge. Consequently, it seems to us, that the order of the Subordinate Judge was without jurisdiction as there was no appeal from the order of the Munsif having regard to the provision of Section 153 to which I have referred,

3. The result is that we make the Rule absolute with costs; hearing-fee one gold mohur, and the order of the Subordinate Judge is set aside.

4. Rule No. 1090 is discharged.