

(1918) 07 PAT CK 0011
In the Patna High Court

Makru Rai and Others

APPELLANT

Vs

Sarjug Pershad Misser and Others

RESPONDENT

Date of Decision : 31-07-1918

Acts Referred:

Bengal Tenancy Act, 1885 — Section 174

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 21 Rule 89(3)

Citation : AIR 1918 Patna 82 : 47 Ind. Cas. 654

Hon'ble Judges : Thornhill, J;Ali Imam, J

Bench : Division Bench

Judgement

Ali Imam, J.—The only point of law on which the learned Vakil on behalf of the petitioner has addressed us arises qp the question of the construction of Section 174, Bengal Tenancy Act, and Rule 89, Order XXI, Civil Procedure Code. The appellants were the judgment-debtors in a rent-decree. In execution of that decree a proclamation of sale was issued for satisfying the decretal amount. Thereafter the sale took place and under section" 174 of the Bengal Tenancy Act the appellants deposited the amount mentioned in the sale proclamation with five per cent, on the purchase-money. The learned Munsif, before whom the amount -in question with the five per cent, was deposited, accepted the sum and set aside the sale. The respondents then preferred an appeal to the learned District Judge of Darbhanga, who reversed the order passed by the Munsif and directed the sale to be restored.

2. The ground on which the learned District Judge has held that the deposit made by the judgment-debtors was insufficient is based upon a comparison of the language of Section 174 of the Bengal Tenancy Act and Rule 89, Order XXI of the Civil Procedure Code". Section 174 with reference to the amount contains these words: " the amount recoverable under the decree with costs", whereas the rule contains the words, ""the amount specified in the proclamation."

3. It is not for a moment claimed by the appellants that they deposited the amount recoverable under the decree with costs. Their learned Vakil frankly

admits that the amount specified in the proclamation was deposited, but he has contended that in fact, although the language of the two sections is different, the deposit made of the amount specified in the proclamation" would work out to be the amount recoverable under the decree with costs. With this contention we are not in sympathy, nor are we satisfied that the amount in question is the same. The difference of language has a purpose, as the two Acts have different legislative schemes. The learned Judge in dealing with this aspect of the question has very rightly drawn attention to Sub-section 3 of Rule 89, Order XXI, which clearly shows the position of the decree-holder under the Code with respect to any further charges that he may claim under the decree and in respect of which he may receive satisfaction. No such provision has been made in Section 174. We are, therefore, of opinion that the learned Judge below was right in the construction he has placed upon the sections and that, therefore, his order restoring the sale, was a just and proper one. In the circumstances the application is rejected with costs.

Thornhill, J.

4. I agree.