
(1941) 07 PAT CK 0002

In the Patna High Court

Midnapore Zamindari Co., Ltd.

APPELLANT

Vs

Chintamoni Mandal and Others

RESPONDENT

Date of Decision : 29-07-1941

Acts Referred:

Bihar Tenancy Act, 1885 — Section 169
Chotanagpur Tenancy Act, 1908 — Section 209, 60

Citation : AIR 1941 Patna 600

Hon'ble Judges : Rowland, J

Bench : Division Bench

Judgement

Rowland, J.—This appeal by the decree, holder is directed against the concurrent orders of the Courts below refusing to execute the decree which he holds against the respondent for rent of a tenure khewat No. 4 for a period beginning some time in 1936 and extending up to 30th May 1937, the date on which the tenure was put to sale in execution of an earlier decree for its own arrears of rent up to some time in 1936 and was purchased by the present decree-holder who is the landlord of the tenure. The judgment-debtor objected that as the landlord had purchased the tenure and as the rent of the tenure was a charge on the tenure itself, therefore the landlord purchaser was the person responsible for the rent of the period between 1936 and the auction purchase and could not recover this amount from other assets of the sold up tenant.

2. He succeeded in getting the assent of the executing Court to this proposition by citing the Pull Bench decision in Nripendra Nath Chatterjee Vs. Kuldip Misra, , but that decision is not authority for the broad proposition sought to be based on it for two reasons: first, it is clear that the question of liability of the holding itself in the hands of the auction purchaser for arrears of rent for a period anterior to the" date of the sale depends on its having been put up to sale with notice that it is saddled with such liability; that is to say it depends on what was put in the sale proclamation as to whether dues up to the date of sale are to be treated as a liability on the holding or not. If there is nothing in the sale proclamation to indicate that the tenancy is being sold saddled with a liability for dues to the date

of the sale, then it is difficult to see any reason why the tenant who has enjoyed the usufruct of the holding right up to the date of the sale should be allowed to do so free of any rent for the period between the date of the suit and the date of the auction sale.

3. Indeed when the tenancy is of value substantially more than the amount of the rent decree, it is quite clearly laid down in Section 169, Bihar Tenancy Act, that the surplus sale proceeds after satisfying the decree will next be devoted to paying to the decree-holder any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale (Section 169(1)(c), Bihar Tenancy Act). These surplus sale proceeds would be put for this provision as asset of the judgment-debtor. Therefore it is clear that the Bihar Tenancy Act recognizes the liability of the assets of the judgment-debtor to pay rent due to the decree-holder for the period between the institution of the suit and the date of the sale.

4. The provisions of Section 209, Chota Nagpur Tenancy Act, are like those of Section 169, Bihar Tenancy Act. It is an exception to this principle that the decisions referred to in the Patna Full Bench case, and that decision itself, have laid down that if the sale certificate itself announces that the rent for the intervening period is chargeable on the holding sold, then the auction purchaser having been enabled to buy the property cheaply in consequence of this announcement cannot thereafter turn round and say that he bought the property free of that liability.

5. In the present instance, however, that Full Bench decision can have no application because we are dealing with a matter not under the Bihar Tenancy Act but under the Chota Nagpur Tenancy Act and the point is governed by Section 60 which is in the following terms:

The rent of a tenancy shall be a first charge on the Tenancy provided that if a tenancy is sold in execution of a decree for arrears of rent the purchaser shall acquire the tenancy free of all liability for rent for any period prior to the date of the sale and rent due for any such period shall be first charge on the sale proceeds of the tenancy.

6. In face of the proviso, it is clear that in Chota Nagpur liability for rent for a period prior to the date of the sale cannot be imposed on the purchaser of the tenancy whatever may be the contents of the sale proclamation. The law in Chota Nagpur thus differs from the law under the Bihar Tenancy Act. The Courts below have not only overlooked Section 60, Chota Nagpur Tenancy Act, but have also erred in thinking that the question about the propriety of passing a decree for the subsequent rent could be entertained in an execution proceeding.

7. It was contended for the decree-holder that the judgment and decree not having been set aside in appeal were res judicata and could not be questioned in an execution proceeding. The contention was correct and should not have been negatived by the Court below. The defendant could have resisted the suit. Not

having resisted it or having failed in his defence, the decree is binding on him.

8. Mr. Chatterji for the respondents was not able to support the decision of the Courts below on the grounds on which it was based; but he has suggested that execution could not proceed because the decree, holder was seeking to execute it against property of the judgment-debtor u/s 210, Chota Nagpur Tenancy Act, without obtaining the permission of the Deputy Commissioner to do so and without first making an application for the sale of the tenure in respect of which the arrear of rent accrued.

9. He has referred to Lal Inderjit Nath Sahi Deo Vs. maharaja Pratap Udai Nath Sah Deo and Others, in which the procedure for execution of rent decree has been examined. I am asked to determine that Sub-section (2) of Section 210 applies notwithstanding, that the tenure has previously been sold in pursuance of Section 208 and further to assume that the Deputy Commissioner's permission has in fact not been taken. This point does not seem to have been taken in the Courts below and I cannot deal with it in second appeal.

10. I shall follow the ordinary rule of not allowing a new point to be taken in second appeal which calls for investigation of matters of fact not raised in the Courts below.

11. In the result the appeal will be allowed, the orders of the Courts below set aside, and the case remanded to the first Court to readmit the execution case to the file and dispose of it according to law. The costs of the objection of the appeal to the Judicial Commissioner and of the appeal to this Court are to be paid by the respondents.