

**(1900) 05 CAL CK 0017**  
**In the Calcutta High Court**

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|---------------------------|----|------------|
| Mohabut Singh and Another | Vs | APPELLANT  |
| Umahil Fatima and Others  |    | RESPONDENT |

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**Date of Decision :** 30-05-1900

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 167, 3(16)

**Citation :** (1901) ILR (Cal) 66

**Hon'ble Judges :** Harington, J; Ghose, J

**Bench :** Division Bench

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## Judgement

Ghose, J.—This was an action brought to enforce a mortgage security. The defendant No. 15 alleged that the incumbrance which the plaintiff's sought to enforce in this action had been annulled by proceedings taken u/s 167 of the Bengal Tenancy Act,

2. The real question that has been argued before us on appeal is whether the application which has to be made to the Collector under that section was made to the proper officer, and whether the notice was duly issued by the officer by whom it has to be issued under the provisions of the section,

3. In the Court of first instance a question arose as to whether, the defendant No. 5 was out of time in the proceedings which he took to annul the incumbrance, and it was found as a fact by the Munsif that neither the defendant No. 4, who is the assignor, nor the defendant No. 5, who is his assignee, was served with notice of the incumbrance until served with the summons in the suit which has given rise to this appeal, and that therefore the defendant No. 5 was within the time prescribed by the statute.

4. In the Lower Appellate Court no finding of fact appears to have been arrived at as to whether the defendant No. 4 or the defendant No. 8 had notice of the existence of this incumbrance, and the learned Judge appears to have held that inasmuch as the assignee had not as a matter of fact express notice of the existence of this incumbrance at a time more than a year before the bringing of

the action, therefore the assignee had power to take these proceedings u/s 167, irrespective as to whether the assignor had notice or not.

5. We are hardly able to assent to the view taken by the learned Judge of the Lower Appellate Court with regard to the notice; but for the reasons which will presently appear it is not necessary for us to deal with that point in any detail, because this appeal must be disposed of on what is the real question, and that is whether the Sub-divisional Officer in this case was authorized to receive an application u/s 167 of the Bengal Tenancy Act, and to issue notice under that section annulling the incumbrance. Section 167 provides that a purchaser, who has power to annul an incumbrance, may present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled. "Collector" is denned by Clause (16) of Section 3 of the Act as "the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act." Now, it appears that the practice, of the Local Government is to appoint officers, sometimes a gentleman holding the position of a Sub-divisional Officer, as in this case, to perform the functions of a Collector under certain "Specified sections of the Bengal Tenancy Act. As an instance, one Notification appointed all the officers in charge of sub-divisions to discharge the functions of a Collector under Sections 12, 13 and 15 of the Act. Now, it being the practice of the Local Government to appoint officers to discharge duties under particular sections, it seems to us it is impossible to argue that, because an officer has been appointed to discharge particular duties under particular sections, he is thereby empowered to discharge duties under any other sections of the Act. It appears to us that the very fact that he is only appointed to perform particular duties under particular sections by implication involves the position that he is not empowered to perform other duties under sections other than those under which he is appointed to perform duties and it seems to us that such appointment when made creates the officer a Collector within the meaning of Section 3, Clause (16) for the purpose of carrying out the duties under those particular sections, and does not make him a Collector " for all purposes of the Act." If that be so we have to consider whether the Sub-divisional Officer in this case had been appointed to perform duties u/s 167. It appears from a reference to the Civil List for July 1897, which was in force when these proceedings took place, that this gentleman was not empowered to perform duties u/s 167, and it has been very fairly admitted by the Vakil who argued the appeal on the part of the respondents that he is unable to say that as a matter of fact the Sub-divisional Officer in this case was empowered to perform duties under 8, 167 of the Bengal Tenancy Act.

6. Under these circumstances we are of opinion that the Sub-divisional Officer had no power to receive an application such as is provided for by Section 167 of the Bengal Tenancy Act nor had he jurisdiction to issue the notice annulling the incumbrance under that section. It follows, therefore, that the defendant No, 5 has failed to annul the incumbrance which the plaintiff seeks to enforce on the property in suit.

7. The result is that this appeal must be allowed, the judgment of both the lower Courts, reversed, and the suit decreed with costs in all the Courts.