
(1921) 07 CAL CK 0034
In the Calcutta High Court

Mohendra Nath Nanda and Others

APPELLANT

Vs

Baidya Nath Tripathi and Others

RESPONDENT

Date of Decision : 22-07-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 170(3)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1922 Cal 95 : 70 Ind. Cas. 127

Hon'ble Judges : Lancelot Sanderson, C.J.; Chotzner, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—This is a Rule which was granted by my learned brothers, Mr. Justice Chatterjee and Mr. Justice Suhrawardy, calling upon the opposite party to show cause why the order complained of should not be set aside. The order complained of is an order of the learned Munsif sitting at Contai, and the matter arose in this way. The petitioners in this Court, at whose instance the Rule was granted, are the landlords.

2. They obtained a decree against a purda-nashin widow for an ears of rent, and an execution case was instituted for the purpose of putting the property up to sale. The opposite parties are admittedly the reversioners, and they applied to the learned Munsif to be allowed to deposit the decretal amount u/s 170, Sub-section (3) of the Bengal Tenancy Act. The learned Munsif allowed the application and there was an appeal to the learned District Judge who held that the appeal did not lie. The learned Vakil, who supported this Rule, agreed that there was no right of appeal to the learned District Judge. By reason of the appeal proceedings, considerable delay took place in making the application for this Rule; but that matter was taken into consideration by the learned Judges who granted this Rule; and in my judgment it is not necessary for use to deal further with that part of the case. The learned Vakil's argument was based upon the words of Section 170(3). His argument was that, inasmuch as Section 170(3) provided that "The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this

section," the opposite parties, who are merely holders of a reversionary interest in the property, were not persons entitled to make the deposit.

3. The whole question depends upon whether the reversioners can be said to be persons having an interest in the tenure or holding voidable on the sale. In my judgment those words must mean an interest, which is in existence at the time of the sale and which will become liable to be avoided on the sale asking place at the option of some one. The question is whether the interest of the reversioners is such an interest. In my judgment it is not. Assuming, for the sake of argument that the reversionary interest would be an existing interest at the time of the sale when it took place, in my judgment it could not be said to be an interest which would become liable to be avoided on the sale taking place consequently, in my judgment, the reversioners have not within the meaning of the words of the section an interest in the tenure or holding voidable on the sale.

4. A It was argued by the learned Vakild who showed cause against the Rule that we should not make this Rule absolute because this was not a case which would entitle the Court to exercise the powers of revision conferred upon the Court by Section 115 of the CPC The learned Munsif by his judgment held that the reversionary heirs were persons who were entitled to deposit the money within the meaning of Section 170(3) of the Bengal Tenancy Act As I have already said, the reversioners were not, in my Judgment, persons who were entitled to pay money into Court under that sub-section Consequently, the learned Munsif in allowing the reversioners to deposit the decretal amount was ^exercising a jurisdiction not, vested in him by law or he was acting in the exercise of his jurisdiction illegally or with material irregularity. Consequently the provision of Section 115 of the CPC apply to this case. In my judgment, therefore, this Rule must be made absolute.

5. The objection which the petitioners took may or may not be a purely technical one. I do not know whether the reversioners in applying to make the deposit were acting entirely in their own interest or whether they were acting partly in their own interest and partly in the interest of the widow. I mention this because it was admitted by the learned Vakild who appeared in support of the Rule that even now it is not too late for the widow, who is the judgment-debtor and who clearly comes within Section 170(3), to pay the money into Court in accordance with the provisions of that sub-section, if she can provide the money out of her own pocket or if she can induce the reversioners or other persons to advance the money to her.

6. For the above mentioned reasons, in my judgment, this Rule should be made absolute. Having regard to the facts of the case, we do not make any order as to costs.

Chotzner, J.

7. I agree