

(1934) 12 CAL CK 0028
In the Calcutta High Court

Nanda Gopal Sett and Others

APPELLANT

Vs

Siraj Mondal and Others

RESPONDENT

Date of Decision : 06-12-1934

Acts Referred:

Bengal Tenancy Act, 1885 — Section 174

Citation : 156 Ind. Cas. 1007

Hon'ble Judges : M.C. Ghose, J

Bench : Single Bench

Judgement

M.C. Ghose, J.—This is a petition by the decree-holders auction-purchasers in a case in which the Munsif set aside the auction sale. The facts which are not disputed are that the petitioners who are co-sharer land-holders obtained a rent decree against the opposite party and that in execution of the said decree they purchased the rent lands at auction on August 23, 1932. Thereafter on September 19, 1932 the judgment-debtors deposited Rs. 48 odd u/s 174 of the Bengal Tenancy Act in full satisfaction of the decree and prayed that the sale be set aside. When the petition was put up before the Munsif the learned Munsif pointed out on September 24 that the amount deposited fell short of the total amount due and directed the judgment-debtors to deposit the deficit by November 5. On November 5, the matter was again adjourned to November 23, and then it was again adjourned to December 16, but as the judgment-debtors did not take any steps to pay the deficit the Court rejected their petition to set aside the sale. Thereafter the petitioners prayed for delivery of possession and possession of the rent lands was delivered to them on April 21, 1933. Meantime the petitioners had obtained another decree against the opposite party in case No. 480 of 1933 and applied to the Court for attachment of Rs. 48 odd which had been deposited in the execution case now under consideration. On May 11, 1933, the Munsif directed notice to issue to the judgment-debtors to show cause why the amount of Rs. 48 odd should not be attached and transferred to the credit of the decree-holders as prayed for. Notice was served on July 4, 1933. The judgment-debtors appeared and on July 29, 1933, they petitioned for time to file

objection to the order of attachment. The case was adjourned to August 4, 1933. The judgment-debtors did not appear and the matter was again adjourned to August 24, 1933, and again to September 4, when the Munsif passed the order that as the judgment-debtors did not file any objection the sum of Rs. 48 be transferred to the credit of the decree-holders as prayed for. It was, accordingly, transferred and the decree in the execution case was satisfied thereby. Long after that the co-sharers of the petitioners instituted a rent suit in respect of the same lands against the judgment-debtors making the petitioners pro forma defendants. In that suit the petitioners filed a written statement on February 21, 1934 stating inter alia that they had purchased the rent lands at Court auction. The opposite party appeared in that suit and, thereafter, on May 14, 1934, filed the present petition u/s 151, stating that they were unaware that the amount of Rs. 48 odd deposited by them in September 1932, was not sufficient and that there was a deficit and that the Munsif's order calling upon them to pay the deficit was not brought to their knowledge and that until they filed the present petition they were not aware that the sale had been confirmed and possession had been delivered to the petitioners. They prayed that the deficit amounting to Rs. 2-6-0 may now be accepted and that the sale held in 1932 be set aside. The Court accepted this prayer and set aside the sale.

2. It is urged by the learned Advocate for the petitioners that the defendants story that they were ignorant of the Munsif's order in 1932 and ignorant of the fact also in 1933 that the petitioners had prayed for attachment of the sum of Rs. 48 odd in another execution case cannot be accepted. It was the business of the opposite party and their Pleader to inform themselves whether their petition to set aside the sale was allowed or not. Though three separate dates at long intervals were given to the judgment-debtors neither they nor their Pleader appeared to deposit the deficit. Even if it be supposed that they were innocently ignorant of the Munsif's order of 1932 it is not worthy of belief that they were ignorant of the matter when they received a notice in 1933 of the petitioner's prayer to attach the sum of Rs. 48 odd for the satisfaction of another decree. The very fact that that amount of Rs. 48 odd was to be transferred to satisfy a decree in another suit was sufficient to show to the judgment-debtors and their Pleader that that sum had not been applied to set aside the auction sale in this suit. Though the judgment-debtors appeared and filed a petition asking for time to compromise the matter yet it is urged that neither they nor their Pleader were aware that the sale had not been set aside in 1932.

3. Upon hearing the learned Advocates and upon perusing the affidavits and counter-affidavits it appears clear that this plea of ignorance cannot be accepted. The judgment-debtors must have known in 1933 that their petition to set aside the sale had been rejected. Further, though the written statement of the petitioners was filed on February 21, the judgment-debtors did not file their petition u/s 151 till nearly three months later namely, on May 11, Section 174 of the Bengal Tenancy Act allows only 30 days for the deposit of the decretal amount in a rent suit. After 30 days the judgment-debtors are not permitted to

deposit the decretal amount to set aside a sale. In this case, they were aware of the matter in 1933 and again in February 1934, but they did not apply till May 1934. 30 days had expired many times over. Further, the learned Munsif in setting aside the sale omitted to note that the amount of Rs. 48 odd which had been deposited in 1932 for the satisfaction of this decree was no longer available as the same had been taken away under attachment for the satisfaction of another decree.

4. The result is that this Rule is made absolute and the order of the Munsif is set aside. The rent suit, the hearing of which was stayed pending the hearing of this suit, will now be decided according law.