

(1918) 05 CAL CK 0072
In the Calcutta High Court

Narayan Chandra Poddar and Others

APPELLANT

Vs

Keshab Lal Dhai Bhai and Others

RESPONDENT

Date of Decision : 03-05-1918

Acts Referred:

Transfer of Property Act, 1882 — Section 99

Citation : 46 Ind. Cas. 493

Hon'ble Judges : Smither, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This appeal is preferred by the defendants against the decision of the learned District Judge of Bankura, dated the 13th March 1916, affirming the decision of the Munsif of Khatra. The plaintiffs brought the suit for redemption. The Judge has decreed redemption. The point made in this case is this: The plaintiffs mortgaged a four-anna share of a property by way of an usufructuary mortgage to the defendants' father in the year 1885. Contemporaneously with the mortgage-deed, the plaintiffs took a settlement of that share, that is, they became the tenants of the defendants at a rent corresponding to the interest due on the mortgage. The rent fell into arrear. Thereupon a rent suit was brought by (be mortgagees, a decree was obtained and, in contravention of Section 99 of the Transfer of Property Act, the equity of redemption was attached, brought to sale and purchased, by the mortgagees. Therefore, the question is, whether that sale was void or voidable and whether the defendants could purchase the equity of redemption. It may be admitted that judicial authorities are not all one way. But there is one case of this Court [Pancham Lal Chowdhury v. Kishun Pershad Misser 6 Ind. Cas. 47 : 14 C.W.N. 579 : 12 C.L.J. 574], which unless we send this case to a Full Bench is clearly binding on us. The facts as found by the learned Judge in this case are that the defendants, the mortgagees, cheated the ignorant and illiterate tenants. I think, if these findings of fact remain unchallenged, as they must, it is not a case which we should send to the Full Bench. It has been decided on more than one occasion that we are not bound to refer a case for the consideration of a Full Bench. In this case, we ought to

content ourselves by simply following, without expressing either our approval or disapproval, the case of Pancham Lal Chowdhury v. Kishun Pershad Misser 6 Ind. Cas. 47 : 14 C.W.N. 579 : 12 C.L.J. 574.

2. Another point has been argued, namely, as to the improvements. The learned Judge of the lower Appellate Court has found facts which would negative this or rather show that the defendants have failed to prove any such improvements.

3. The appeal fails and is dismissed with costs.

Smither, J.

4. I agree.