

(1918) 08 CAL CK 0001
In the Calcutta High Court

Narendra Bhusan Roy on his Death his Sons and Legal
Representatives Khagendra Bhusan Roy and Others

APPELLANT

Vs

Mr. Jatindra Nath Roy and Others

RESPONDENT

Date of Decision : 01-08-1918

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : AIR 1919 Cal 181(1) : 50 Ind. Cas. 329

Hon'ble Judges : Teunon, J;Cuming, J

Bench : Division Bench

Judgement

Teunon, J.—In this case in a suit framed u/s 148 A of the Bengal Tenancy Act, certain co-sharer landlords obtained a decree for the arrears of rent due in respect of a certain tenure spoken of as a ganti.

2. In execution of the decree, in proceedings taken under the provisions of Chapter XIV of the Act, the decree-holder landlords brought the tenure to sale and themselves purchased the same.

3. The sum realised was in fact insufficient to satisfy the decree.

4. The remaining co-sharer landlords next applied under Order XXI, Rule 90, of the CPC to have the sale set aside.

5. Both the Courts below have held that the Co-sharer landlords have no locus standi to make the application. Now the suit in which the decree was obtained having been framed in the manner provided in Section 148 A, under that section and also u/s 158 B, the decree has the force and effect of a rent decree. This was the case of the decree holders and it was further their case that by the sale the tenure passed to the purchaser. In that view they should not have been heard to say that their Co-sharers were not interested in the results of the sale of the tenure, and in dealing with the case merely under the provisions of the Code of Civil Procedure, and without advertence to the Bengal Tenancy Act [see

more particularly the proviso to Section 169(1)], the Courts below have seriously erred.

6. In this view it is unnecessary to discuss the other question raised.

7. We set aside the decision of the District Judge and return the case to him and order that he may hear and dispose of it on the merits.

8. Costs of this Rule will be costs in the case. We assess the hearing fee at two gold mahurs.

Cuming, J.

9. I agree with some hesitation. I am somewhat doubtful whether the present application falls strictly within the scope of Section 115, Civil Procedure Code.