

(1897) 11 CAL CK 0006

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 76 of 1896

Nazir Mahomed Sirkar

APPELLANT

Vs

Girish Chunder Chowdhuri

RESPONDENT

Date of Decision : 23-11-1897

Acts Referred:

Citation : (1897) 11 CAL CK 0006

Final Decision : Allowed

Judgement

1. The only contention in this appeal is that the lower Courts were wrong in not holding that the entire putni tenure was sold inclusive of the interests which the Plaintiff had in it. The facts as found are these :--The putni tenure belonged to two brothers, Bhagwan and Iswar. Bhagwan died in 1277, leaving a son, the Plaintiff Girish Chunder, who was then a minor. Iswar died in 1286, leaving Bhowany, a widow, and he had also made a Will appointing certain executors. In 1290, the zemindar brought a suit against the widow of Iswar and the executors to recover the rent due on account of the entire putni tenure and got a decree, in execution of which the tenure was sold and eventually it came into the hands of the Appellants. Now, both the lower Courts have held that this decree and sale did not in any way affect the interests of the Plaintiff, because he was not a party to the rent-decree. The first Court also considered that even if he was party to the rent-decree, the sale did not pass his interests, because only the light, title and interest of the judgment-debtors was sold. That is a view which apparently did not meet with approval from the District Judge. At all events, he did not allude to it and decided that the Plaintiff's interests did not pass by the sale, solely on the ground that the Plaintiff was not a party to the decree as he ought to have been.

2. The decision of both the Courts seem to us to be erroneous. In the first place we think that, on the facts as found, it was not necessary to make the Plaintiff a party to the suit at all. Accepting the finding of the Courts that Bhagwan and Iswar were registered tenants, on Bhagwan's death no one was registered in his

place and the suit for arrears of rent was brought against the widow and the executors of the sole surviving registered tenants. Under sec. 26 of Act VIII (B.C.) of 1869, persons succeeding by transfer, gift or succession to rights in permanent tenures or talooks must register their interests in the sherista of the zemindar. In this instance there was no such registration, and we think the zemindar was not bound to look for his rent beyond the representatives of the surviving registered tenant. In the second (sic) think that, even if the zemindar ought to have made the Plaintiff, Girish Chunder, a party to the suit, he was substantially a party to it. The suit was undoubtedly framed as a suit for arrears of the entire tenure. One of the executors who was sued as representative of Iswar was admittedly, according to the Plaintiff's own statement and according to the finding of both Courts, the de facto guardian of the infant and manager of the entire property on the part of all the persons interested in it. The Defendants in the suit fully represented the tenure. It is difficult to distinguish the facts of this case from the facts in *Eshan Chunder Mitter v. Buksh Ali Chowdry* (1), where their Lordships of the Privy Council, looking into the whole proceedings, held that the interests of the son passed, although the son himself was not actually a party to the suit. Much the same view was taken in the case of *Satish Chunder Lahiri v. Nilkamal Lahiri* (2). We think also that there is no ground for the contention that the sale took place under the provisions of the Civil Procedure Code, and not under the provisions of Act VIII (BC) of 1869, so as to pass, not the tenure itself, but only the right, title and interest of the judgment-debtors. The sale proclamation distinctly sets out that the sale would be held according to the provisions of sec. 59 of Act VIII (B.C.) of 1869. The property advertised was the tenure and the property sold was the tenure according to the sale certificate, and the mere insertion of a statement that the sale was of the rights and interests of the judgment-debtors would (sic) Reports 614. (sic) not, we think, have the effect, under the circumstances stated, of limiting the sale to such rights and interests and not extending it to the tenure itself. Even, however assuming that it was limited to the rights and interests of the judgment-debtors, we think that, for the reasons which we have already given, the Plaintiff was in substance one of the judgment-debtors. The decrees of both the lower Courts will, therefore, be set aside and the Plaintiff's suit dismissed with costs in all Courts.