

(1919) 12 CAL CK 0025
In the Calcutta High Court

Norendra Bhusan Roy and on his Death his Heirs and Legal Representatives, Khogendra Bhusan Roy and Others

APPELLANT

Vs

Jotindra Nath Roy and Others

RESPONDENT

Date of Decision : 18-12-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148A, 158B
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : 55 Ind. Cas. 402

Hon'ble Judges : Panton, J;Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of an application to set aside the sales of a gunti tenure purporting to be held under the provisions of the Bengal Tenancy Act.
2. The application was treated as being one under Order XXI, Rule 90, Civil Procedure Code, but the statements in the petition go to show that it was an application u/s 47, Civil Procedure Code. The Courts below have come to the conclusion that there were no material irregularities and that it was not proved that the price of the property was inadequate.
3. The main contention raised before us is that the sale was void because although the suit was framed u/s 148-A of the Bengal Tenancy Act, notice of the sale had not been served upon the co sharer landlords, who are the appellants before us, before the tenure was put up to sale, as directed by Section 158-B of the Bengal Tenancy Act.
4. The learned District Judge held that the omission to serve the notice did not nullify the sale and that it "reduced the sale to the status of a money sale."
5. It is contended before us that the sale is an absolute nullity. We do not think that that is the correct view of the section.
6. We had to consider this question in another case see Ahamad Biswas v. Benoy Bhusan Gupta 53 Ind. Cas. 515 : 23 C.W.N. 931. There we held that if a co-

sharer landlord wants to have the sale of a tenure or holding, the provision of Sub-section (2) of Section 158B, which is mandatory, must be complied with. We meant that in order that the tenure or holding itself might pass by the sale, the provision of Section 158B, Sub-section (2), must be complied with. In the case of Sarip Hochan v. Tilattama Debi 43 Ind. Cas. 3 : 31 C.L.J. 73 referred to at page 933, 23 Calcutta Weekly Notes Aahmad Biswas v. Benoy Bhusan Gupta 53 Ind. Cas. 515 : 23 C.W.N. 931 Fletcher and Newbould, JJ., held that the failure of the Court to serve such notice renders the sale invalid.

7. The learned Vakil for the respondent has argued that the sale is a perfectly valid sale. We are not inclined to accept that view.

8. As observed in the case of Ahamad Biswas v. Benoy Bhusan Gupta 53 Ind. Cas. 515 : 23 C.W.N. 931 the position of a purchaser at such a sale is that of a purchaser under an ordinary money decree and that such a sale is inoperative as against the co-sharer landlords.

9. In the above view, a sale cannot be set aside on the ground that it was a nullity: and indeed if it was a nullity, it need not be set aside at all. We think, however, that, the sale is not a nullity but that such a sale has the effect of a sale under the money decree.

10. That being so, and having regard to the finding arrived at by both the Courts below that the appellants have failed to prove that there was a substantial injury by reason of the sale, the appeal must be dismissed.

11. It ought to be mentioned that the tenant respondent Basanta Kumar Ghose died more than six months ago and no substitution of his heirs was made. The appeal, therefore, has abated so far as that respondent is concerned.

12. As against the other respondents, the appeal is dismissed with costs-one gold mohur.