

(1878) 07 CAL CK 0016
In the Calcutta High Court

Peary Mohun Mookerjee

APPELLANT

Vs

Rash Behary Bundopadhya

RESPONDENT

Date of Decision : 28-07-1878

Acts Referred:

Citation : (1879) ILR (Cal) 346

Hon'ble Judges : Richard Garth, C.J.;McDonell, J

Bench : Division Bench

Judgement

Richard Garth, C.J.—The judgments of both the lower Courts in this case have proceeded upon an erroneous view of the Rent Law.

2. The suit is brought by the plaintiff, who is the owner of a half share of a patni, to recover from the defendant the rent of that half share (which has been fixed at Rs. 111-3-10 annually), upon the ground that the defendant has become the tenant of the jamma at an auction-sale held on the 12th of Kartick 1280. The rent claimed is from Bysack 1280 to the end of 1282. The defendant admits the plaintiff's right to the rent which accrued due after he (the defendant) purchased the jamma, but disputes the plaintiff's right to recover the rent which accrued due before his purchase. As a matter of fact the plaintiff did sue and obtain a decree against the heir of the former tenant for the rent due for the year 1280; but he abandoned that decree, and is now trying to recover the same rent from the defendant in this suit.

3. It was contended before the Munsif that as the tenure itself under the Rent Law might be made liable for arrears of rent, and as such liability might be enforced against a purchaser of the tenure, the defendant, who in this case only purchased the right, title, and interest of the defaulting tenant, purchased it subject to the defaulting tenant's liability, and was therefore himself subject to be sued for the back rent. The Munsif apparently adopted this view, which was afterwards confirmed by the lower Appellate Court.

4. But we think that both Courts were wrong. The fallacy of their argument arises

from confusing the liability of the tenure with the personal liability of the tenant. A landlord may, by obtaining a decree for rent against his registered tenant, bind the tenure itself in such sort, as to make it always liable to be sold for the amount of the decree, although it may be subsequently purchased by a third person. In other words, the tenure thus bound continues subject to sale at the landlord's option, until the amount of the decree has been satisfied, notwithstanding the tenure may pass, by private sale or otherwise, into other hands. This is the result of the Full Bench decisions--Sham Chand Kundu v. Brojonath Pal Chowdhry (12 B.L.R. 484 : 21 W.R. 94), upon which the Munsif's Judgment proceeds,--and of other cases, which are referred to in the Full Bench judgment, and to which our attention was called during the argument.

5. In this case it so happens that a decree obtained against the former tenant would not bind the tenure, because the plaintiff is only entitled to a fractional share, and not to the whole, of the patni. But that consideration does not affect the present question. Even if the tenure could have been bound by a decree obtained by the landlord against the registered tenant, that would only enable the present plaintiff to sell the tenure itself to satisfy the arrears. It would not enable him to sue the present defendant personally for rent which accrued due before the present defendant became the purchaser. The remedies which are provided by the Rent Law for enforcing the payment of rent by sale of the tenure or by distress are remedies in rem. The personal liability of one tenant cannot be transferred to another; but each succeeding tenant must be subject to his own liabilities.

6. The judgment of the Court below will be modified to this extent that the defendant will only be liable for the rent which accrued due after the date of his purchase, the 12th Kartick 1280, with interest at 12 per cent.; and as the only question raised in the lower Appellate Court and in this Court was as to the rent which accrued due before the defendant's purchase, he ought to have his full costs against the plaintiff in those two Courts and in the Court of first instance. The costs which he has to pay will be proportionately reduced.