

(1907) 05 CAL CK 0023
In the Calcutta High Court

Prabal Chandra Mukerjee

APPELLANT

Vs

Jadupati Chakravarti

RESPONDENT

Date of Decision : 08-05-1907

Acts Referred:

Bengal Tenancy Act, 1885 — Section 169(c)

Citation : (1907) ILR (Cal) 724

Hon'ble Judges : Francis W. Maclean, C.J.;Holmwood, J

Bench : Division Bench

Judgement

Francis W. Maclean, C.J.—The appellant with his two co-sharers brought a rent suit in which they obtained a decree, and in execution of that decree the tenure was put up for sale and was sold. After deducting the costs of the decree-holders and what was due to them under the decree, the balance was paid into Court. It appears that the tenure-holder had mortgaged his tenure. The respondent was the mortgagee, and he brought a suit to enforce his security claiming the fund which is in Court, about Rs. 165. He made the present appellant, one of the landlords, a party to that suit but he made him a party not in his character as landlord but by reason of the case alleged in paragraph 8 of the plaint. It is sufficient, however, that he was not brought before the Court as landlord. That suit came on for hearing and the Munsif, the Subordinate Judge and the learned Judge, from whom this appeal lies, made a decree virtually giving priority to the mortgagee over the present appellant in respect of the balance in Court. It appears, though the date is not given to us, that the present appellant made an application to the Court, relying upon Sub-section (c) of Section 169 of the Bengal Tenancy Act, for payment out to him of the amount of rent which has fallen due to him in respect of the tenure between the institution of the suit and the date of the sale. For some reason or other no order was made on that application, which was served upon the judgment-debtor, until the day after the decree in the mortgage suit, and, then an order was passed, (the Court being satisfied that the amount was due) that out of the sale proceeds of Rs. 165-10-0 in Court, Rs. 131-12-0 in respect of the rent to which I have referred, should be

paid to the appellant. Apparently, all the execution proceedings after the decree in the rent suit were taken in the name of the appellant alone. Whether that was by the authority of his co-sharers, or whether, as we are told, because he had bought up the interests of the co-sharers, does not appear, but the co-sharers are not here and they do not complain, nor do I suppose they would complain. In these circumstances, can the decree which is now appealed against, and which gives priority to the mortgage in respect of the sum of Rs. 131-12 annas stand? I do not think it can. I do not see how the appellant, whom I take for the purposes of to-day to represent the landlord or landlords, has lost the statutory right given by Section 169. No doubt, the mortgagee stands in the shoes of the judgment-debtor: but the judgment-debtor can take nothing until the rent due to the landlord between the institution of the suit and the date of the sale, has been paid, and the mortgagee can stand, in this respect, in no better position than his mortgagor. If the judgment-debtor could not successfully claim the money, his mortgagee cannot, nor do I see how the decree made in this suit can stand alongside of the order made by the same Judge the next day directing payment of the sum of Rs. 131-12-0 to the appellant. No satisfactory argument has been addressed to us to convince me that the appellant has lost the right, which he undoubtedly enjoys u/s 169, to have this money paid out of the balance lying in Court, before any sum can go to the judgment-debtor, or to his mortgagee. I can see nothing to prevent the appellant, having regard to the order made on his application, from getting the sum of Rs. 131-12-0 out of Court.

2. The result, therefore, will be that so much of the decree as declares that the mortgagees have priority over the appellant in respect of the sum of Rs. 131-12-0 must be discharged, and the appellant will have half his costs in all the Courts including the costs of this appeal.

Holmwood, J.

3. I agree.