

(1948) 07 CAL CK 0025
In the Calcutta High Court
Case No : A.F.O.O. Nos. 55 and 56 of 1944

Radhaballav Jew Thakur

APPELLANT

Vs

Dharanidhar Banerjee and others

RESPONDENT

Date of Decision : 15-07-1948

Acts Referred:

Citation : (1948) 07 CAL CK 0025

Judgement

Harries, C.J.—These are two connected execution appeals arising from orders of the learned Subordinate Judge of Birbhum. The matters were dealt with by the learned Subordinate Judge in one judgment and it will be convenient to dispose of both these appeals in this judgment.

2. Appeal from Original Order No. 56 of 1944 arose out of the execution of the decree for rent obtained in Rent Suit No. 11 of 1935. That suit was for rent for the year 1337 B.S. and was eventually decreed in favour of the landlord. In due course Rent Execution Case No. 46 of 1937 was started and the putni which was the subject-matter of the rent suit was sold on 30th May 1938 and purchased by the decree-holder. The price paid was considerably less than the decretal amount. On 29th August 1938, the sale was confirmed and the landlord appellant took possession.

3. Appeal from Original Order No. 55 of 1944 arose out of an execution of a decree obtained in Rent Suit No. 9 of 1938. The decree obtained in that suit was for rent for the year 1338 B.S. the property being the putni which was the subject-matter of Rent Suit No. 11 of 1935 to which I have already made reference. The suit was in due course decreed and on 31st May 1942, Execution Case No. 53 of 1942 was started. As I have already stated, the putni had been sold in the year 1938, so the decree-holder attached other properties belonging to the judgment-debtor in order to satisfy the decree. The judgment debtor objected under S. 47, Civil P.C., claiming that this decree could not be executed against anything other than the putni which was the subject-matter of the rent decree. The learned Subordinate Judge upheld the objection and dismissed the

claim for execution. It is from that order that Appeal No. 55 has been filed.

4. Later the decree-holder applied for execution of the balance of the decree which he had obtained in Rent Suit No. 11 of 1935. As I have said, the sale of the putni in the execution case relating to that decree had not satisfied the decretal amount and there was a substantial amount outstanding. The decree-holder attached other properties of the judgment-debtor and again, the judgment-debtor objected under S. 47, Civil P.C. claiming that the balance of the decree could only be satisfied out of the putni by reason of the provisions of S. 168A, Ben. Ten. Act. This objection was upheld and the application for execution dismissed. It is from that order that Appeal No. 56 of 1944 arises.

5. Learned advocate for the appellant had to concede that he cannot press Appeal No. 56 of 1914. There is Bench authority of this Court upon this very question and those cases are binding upon us. The very point was decided in the case of Atul Chandra Chakravarti and Others Vs. Upendra Narayan Mukhopadhyaya, . It is true that that case has been reconsidered in another Bench decision in the case of Sree Sree Iswar Radha Ballav Jew Thakur v. Mahima Ranjan Roy, 49 C.W.N. 629 : (A.I.R. 1946 Cal. 6). The judgment in the earlier Bench case was delivered by Mukherjea J, who also delivered the judgment in the later case. In the later case he has laid down that the earlier case can only be regarded as an authority for what it actually decided. It actually decided that a decree-holder who had in execution of a rent decree sold and purchased a putni holding could not execute for the balance of the decree against other properties of the judgment-debtor. That is the precise position in Appeal from original order No. 56 of 1944 and that being so the appeal will be dismissed with costs.

6. In appeal from Original order No. 55 of 1944 the landlord attempted to execute a decree for rent which had accrued due subsequent to the earlier decree against other properties of the judgment-debtor. The putni in question had been sold and the sale had been confirmed a few days before this rent suit was filed. The application for execution was made some years after the sale of the putni. Mr. Atul Chandra Gupta has contended that even in this case the decree-holder who himself had purchased the putni in the earlier sale could not execute this subsequent decree against any other property of the judgment-debtor. He clearly could not execute against the putni because he had purchased the property at the earlier sale. In short the argument is that he has no remedy for realising the decree for the subsequent rent.

7. It appears to me that this case is governed by the later Bench decision to which I have already made reference, namely, Sree Sree Iswar Radha Ballav Jew Thakur v. Mahima Ranjan Roy 49 C.W.N 629 : (A.I.R. 1946 Cal. 6). In that case the landlord had obtained a decree for rent but had not executed the decree against the holding. Later, in respect of further arrears which had accumulated after the first decree the landlord started a certificate case under the Public Demands Recovery Act against the tenant and in execution of the certificate he

put the putni in question to sale and purchased it. Later, he sought to execute the rent decree which he had obtained earlier against other properties. The Bench held that he could do so and that the case clearly fell within the proviso to sub-s. (1) of S. 168A, Ben. Ten. Act. The only distinction that can be made between that case and the present case is that in the Bench case decided by Mukherjea J. the landlord was seeking to execute a decree for rent obtained before the proceedings which led to the sale of the putni which was purchased by him. In the present case the landlord is seeking to execute a decree for rent which accrued subsequently to the decree which led to the sale of the putni. I can see no distinction in principle between these two cases and as the case of *Sree Sree Iswar Radha Ballav Jew Thakur v. Mahima Ranjan Roy*, 49 C.W.N. 629 : (A.I.R. 1946 Cal. 6) binds this Bench we must follow it. That being so, the decision of the learned Subordinate Judge that the landlord in this case could not execute against other properties of the judgment-debtor cannot be sustained and must be set aside.

8. In the result, therefore Appeal from Original Order No. 55 of 1944 is allowed. The order of the learned Subordinate Judge is set aside and execution is directed to proceed. The appellant will be entitled to costs of this appeal and in the Court below against respondents 1 and 2 only.

Chakrayartti, J.

9. I agree.