

(1917) 04 CAL CK 0014
In the Calcutta High Court

Raja Pramatha Bhusan Deb Roy Bahadur	APPELLANT
Vs	
Ram Chandra Mandal and Others	RESPONDENT

Date of Decision : 04-04-1917

Acts Referred:

Citation : 39 Ind. Cas. 881

Hon'ble Judges : Smither, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the plaintiff against a decision of the learned Subordinate Judge of Jessore, dated the 14th December 1914, affirming the decision of the Munsif at Narail. The plaintiff brought the suit to recover possession of certain lands. The case is a little difficult one because it involves a question as to the transferability and liability to sale in execution of the rights of an under-ryot. The defendant No. 5 in the present case was the first purchaser, the original under-ryoti being the defendants Nos. 1 and 3, and the defendant No. 5 purchased at a sale in execution of a money-decree. No consent of the plaintiff landlord was obtained to that sale either before the sale in execution or subsequent thereto. The plaintiff purchased at a subsequent sale in execution of a money-decree or, at any rate it must be taken that the sale was a sale under the provisions of the Civil Procedure Code. To that sale the plaintiff naturally assented when he was selling the property and was purchasing it himself. The learned Judge at the trial in the lower Appellate Court has found that subsequent to the sale to the plaintiff in execution there was a recognition of the defendants Nos. 1 and 2 by the plaintiff. The defendants Nos. 1 and 2 have also apparently come to an arrangement with the defendant No. 5. In any case the defendants Nos. 1 and 2 are not liable to be ejected from the lands and the real contest is as to whom the defendants Nos. 1 and 2 should pay their rent. The suit may seem to be the development of an ordinary action in ejectment. There are many cases in this Court showing a suit disposed of in the same manner. The matter in debate in this Court has turned largely, if not wholly, on the question as to what are the rights and interests of a purchaser at a sale in execution of an under-ryot

interest when the landlord does not consent to the sale. The tenants have taken no objection and presumably, therefore, the sales in both cases are binding on the defendants Nos. 1 and 2. The case is not one of first impression. That an under-ryoti interest is not transferable was distinctly raised and decided in this Court in the case of *Aminunnisa v. Jinnat Ali* 27 Ind. Cas. 271 ; 42 C. 751pc ; 19 C.W.N. 43 ; 20 C.L.J. 548. The learned Judges in the course of their judgment made reference to a decision of Garth, C.J., and Mr. Justice Jackson in the year 1878 for taking the view which the learned Judges in the case I have cited also took, namely, that an under-ryoti interest could not be transferred except with the consent of the landlord. Then it is unfortunate that the reference to that decision See *Bonomali Bajadar v. Koylash Chunder Mojoomdar*, 4 C. 135pc ; 2 Ind. Dec. (N.S.) 87.--Ed. of Garth, C.J., and Jackson, J., is not given in the report and, therefore, we have not been able to advert to it. But the learned Judges held quite clearly in the case of *Aminunnisa v. Jinnat Ali* 27 I C. 271 ; 42 C. 751pc ; 19 C.W.N. 43 ; 20 C.L.J. 548 that an under-ryoti interest was not subject to transfer except with the consent of the landlord. Although the defendant No. 5 has not appeared at the hearing of the present appeal Mr. Sen, who appears for the defendants Nos. 1 and 2, has very kindly placed before us in the course of the argument such cases as support the view of the learned Judge of the Court of Appeal below as regards the case of the defendant No. 5. Then prior to that decision, Mr. Justice D. Chatterjee and Mr. Justice N.R. Chatterjea in the case of *Arsadulla V. Munseb Ali* 14 Ind. Cas. 349 ; 16 C.L.J. 539 ; 16 C.W.N. 831 laid down the following proposition as the law. I read from the top of page 541 Page of 16 C.L.J.--Ed of the report. The rights of an under-ryot "may be sold by the landlord under the Civil Procedure Code, but the question is whether such lands can be sold under the special procedure prescribed in the Bengal Tenancy Act with the consequences attached to sales held under that procedure." So obviously in the view of those learned Judges the landlord could bring the property to sale under the provisions of the CPC although I take it that, having regard to the Full Bench decision the under-ryot could have come forward and raised an objection to the sale. But if he did not come forward, then the landlord having consented to the sale the sale would be binding both on the landlord and the tenants and, therefore, a valid transfer could be effected. In the present case there is this fact. First of all, the plaintiff is the landlord. He purchased in execution this interest which is non-transferable. The tenants, the defendants Nos. 1 and 2, did not come forward and object to the sale and, therefore, the sale is binding on them. As against the defendant No. 5, although he purchased in a prior execution, the plaintiff as the landlord never did assent to the transfer. The defendants Nos. 1 and 2 also did not come forward to object to the transfer. They not only did not do so but actually arrived at an agreement with the defendant No. 5. In that view the plaintiff has got a valid transfer according to the authorities in this Court. The transfer to the defendant No. 5 is not operative as against the plaintiff and, therefore, the plaintiff is entitled on the footing of the decisions that I have cited to have what is called a decree for ejectment against the defendant No. 5 although he is not in actual possession, the real nature of

that decree being that the plaintiff will get the rent from the defendants Nos. 1 and 2 who are in actual possession and the defendant No. 5 will have nothing to do with the property at all. Having regard to the findings made by the learned Judge of the lower Appellate Court, the defendants Nos. 1 and 2 were recognized by the plaintiff after the purchase by him and if the rent is paid I think the defendants Nos. 1 and 2 are entitled to remain in possession of the lands. As regards the defendant No. 5 for the reasons already stated I think he obtained as against the plaintiff no interest in the lands and, therefore, he ought to be ejected in the manner I have already mentioned. The appeal as against the defendants Nos. 1 and 2 will be dismissed with costs. The appeal as against the defendant No. 5 as regards plots Nos. 1 to 7 both inclusive will be allowed with costs both here and in the Courts below otherwise the decree appealed against will stand.

Smithbr, J.

2. I agree.