

(1919) 03 CAL CK 0004
In the Calcutta High Court

Ram Gobinda Chowdhury

APPELLANT

Vs

Rajani Kanta Das and Others

RESPONDENT

Date of Decision : 20-03-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 167

Citation : 53 Ind. Cas. 570

Hon'ble Judges : Ernest Fletcher, J;Cuming, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal preferred by the plaintiff against the judgment of the learned District Judge of Chittagong, dated the 14th August 1917, reversing the decision of the Third Munsif of the same place. The plaintiff brought the suit to enforce a mortgage which was executed in his favour by the defendants first party. The defendants second party subsequently purchased the equity of redemption Only one of them, namely the defendant No. 13, contested the suit, He was also the landlord of the tenure and his case was that the mortgaged property had been sold under the provisions of the Bengal Tenancy Act in execution of a rent decree and purchased by him and the other defendants second party and that proper notice had been served u/s 167 of the Bengal Tenancy Act to annul the encumbrances. The question, therefore, is: "Was the encumbrance annulled?" The learned Judge of the lower Appellate Court has found that the encumbrance was annulled, and it is said that that is a finding of fact not open to question. I do not agree. The learned Judge has found facts from which he infers that proper notice complying with the terms of the Statute was served. What he has found is this. That the plaintiff is a Pleader and he ordinarily practises at a place called Hathagari where apparently he also reside?, and the notice was not served on the plaintiff himself bat was served on a Hind man who had a house jointly with the plaintiff at a village called Sikarpur. The learned Judge, however, makes this finding that no doubt it would have been the better course to have served the Pleader himself at Hathagari. The learned Judge thought that the service at the residence that be had at Sikarpur with his uncle

was a perfectly good service. The statutory rules that have been framed by the Government of Bengal under the provisions of the Bengal Tenancy Act are quite dear on this matter. Rule Z provides that except as otherwise prescribed, a service of notice shall be effected in the manner prescribed for the service of summons on a defendant under the Code of Civil Procedure. So, one has got to look at the CPC and Order V, Rule 12, is quite clear that where it is practicable, the service should be made on the defendant in person. Now, in this case, the Judge has found that it was practicable to serve the notice on the defendant in person. He says it would have been better to serve the Pleader at Hathagari. So obviously, in his opinion, it was quite practicable to serve him there. If it was practicable, the other method of service does not apply, as provided by the Code in the event of the defendant not being found. It seems to me quite clear in this case that there was no proper notice served on the plaintiff to annul the encumbrance. In that view of the case, we must set aside the judgment of the learned District Judge and restore the decree passed by the Munsif with costs both in this Court and in the lower Appellate Court. Cuming, J.

2. I agree.