

(1910) 04 CAL CK 0036
In the Calcutta High Court

Sarajendra Krishna Deb

APPELLANT

Vs

Sannyasi Charan Ghosh and Others

RESPONDENT

Date of Decision : 11-04-1910

Acts Referred:

Citation : 6 Ind. Cas. 357

Hon'ble Judges : Mookerjee, J;Carnduff, J

Bench : Division Bench

Judgement

1. In this Rule we are invited to set aside two orders, one made by the Court of first instance on the 15th "July 1909 and the other by the Court of appeal below on the 19th".Novemb9r 193.9. The petitioner before us sued certain persons as his tenants for arrears of rent. The case was fixed for hearing on the 15th July, 1909. On that date a person of the name of Anukul Chandra Hazra appeared and applied for leave to deposit the full amount of the claim with costs. The applicant was not a party to the suit and did not even apply to be placed on the record, but upon his application, the Court proceeded to record the following order: "The purchaser of the land has paid into Court the entire amount claimed with costs. The plaintiff is directed to take the money in satisfaction of -his claim. The suit is dismissed". The plaintiff then applied to the District Judge to set aside this order in the exercise of his re-visional powers u/s 153 of the Bengal Tenancy Act as the original Court had been specially empowered to exercise final jurisdiction in the matter. The District Judge dealt with the merits of the case and held that under Sections 170 and 171 of the Bengal Tenancy Act, the order of the Court of first instance could be supported. In this view he declined to interfere. We are invited to discharge both these orders. In our opinion neither of them can be supported upon any intelligible principle of law. The deposit was made by a stranger to the suit, who alleged that he had purchased the tenancy from the defendants. He had obviously no locus standi in the matter and the plaintiff could not be compelled to accept payment of rent from a person who was not established to be his tenant and who was not a party to. the suit. Besides if the amount claimed was brought into Court, that was an admission that the plaintiff had a good

cause of action when he commenced the suit: the only logical course, therefore, would be to decree the suit with costs and leave the plaintiff to withdraw the sum deposited in satisfaction of his decree. But a decree could not be made against the defendants on the record who made no admission of liability, nor could it be made against the stranger petitioner who was not a party to the suit. The order of dismissal made by the Court of first instance was, therefore, clearly erroneous and cannot be supported. The order passed by the learned District Judge is equally unsustainable. Sections 170 and 171 of the Bengal Tenancy Act, upon which he relies, have obviously no application, to the case. Recourse may be had to those provisions only in proceedings in execution of a decree for arrears of rent. Here the plaintiff has not yet obtained a decree and, therefore, no question can possibly arise about either the satisfaction of the judgment-debt u/s 170 Clause (2) or the saving of the interest of a person which would be voidable by the execution sales u/s 171.

2. The result, therefore, is that this Rule is made absolute and the orders referred to discharged. The case will be remitted to the Munsif in order that he may proceed to deal with it in accordance with law.

3. It is conceded that this decision applies in principle to Rule No. 4737 of 1909. That Rule is also made absolute and the case sent back to the Munsif to be dealt with in accordance with the directions given in this judgment.

4. There will be no order as to costs as the Rules have not been opposed.