

(1917) 08 CAL CK 0038
In the Calcutta High Court

Sarip Hochan

APPELLANT

Vs

Tilattama Debi

RESPONDENT

Date of Decision : 02-08-1917

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148A, 158B(2)

Citation : 43 Ind. Cas. 3

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

Bench : Division Bench

Judgement

Fletcher, J.—This is a case that admits of no doubt. The suit was brought by the plaintiff to recover possession of a non-transferable occupancy holding. The defendant was a purchaser at a sale in execution of a decree purporting to be a rent decree obtained under the provisions of Section 148A of the Bengal Tenancy Act. The plaintiff's purchase had prior to the institution of that rent suit under Section, 148A been recognized by some of the co-sharer-landlords. The co-sharer-landlords who did not recognize the plaintiff then instituted the suit for rent against the original tenant and added as defendants the co-sharer landlords who had recognized the plaintiff. A decree was obtained against the original tenant and the property was purported to be sold in execution of that decree, the defendant being the purchaser. The learned Judge in the Lower Appellate Court has held that the sale in execution under the rent decree did not operate so as to pass the holding to the defendant, and the ground on which he held that was that the provisions of Section 158B(2) of the Bengal Tenancy Act as to the service of notice on the other co-sharers had not been followed. The learned Judge was obviously the Judge to determine whether or not such a notice had been served and that matter is not open to the defendant appellant in this appeal. The only question that has been urged is that the provision as to the giving of the notice of the application for the execution of the decree as mentioned in Section 158B(2) is not mandatory but is merely directory and the failure of the Court to serve such a notice is an irregularity which does not affect the validity of the sale made in execution. I do not agree with that. I think the

word "shall" in the section occurring before the words "before proceeding to sell" means that the Court shall not sell unless a notice has been given to the other co-sharers as mentioned in Section 158B(2). I agree with the view adopted by the learned Additional District Judge of the Lower Appellate Court. The present appeal, therefore, fails and must be dismissed with costs.

Newbould, J.

2. I agree.