

**(1918) 11 CAL CK 0019**  
**In the Calcutta High Court**

Shasti Charan Biswas

APPELLANT

Vs

Nakul Chandra Barua and Others

RESPONDENT

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**Date of Decision :** 26-11-1918

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 27, 37

**Citation :** 49 Ind. Cas. 959

**Hon'ble Judges :** Beachcroft, J

**Bench :** Single Bench

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## Judgement

Beachcroft, J.—In this appeal the plaintiff is the appellant. The suit was one for rent. The plaintiff was a purchaser of an estate at an auction sale under Act X( of 1859. He claims that rent should be recovered at Rs. 33 per year. A number of documents have been put in evidence referring to the previous litigation between the parties. For the purposes of the present appeal it is only necessary to refer to one of them, namely, the decree of the year 1903. That was in a suit by the previous proprietor of the estate against these tenants for assessment of rent and in that case the rent was assessed at Rs. 26.12.0. Relying on that decree the Munsif gave the plaintiff a decree for rent at the rate assessed in that decree, On appeal the learned Judge set aside the Munsif's decree and gave the plaintiff a decree for rent at the rate of Rs. 9 per year, that being the rate which was shown in the Record of Rights which was published in the year 1895 and as he was of opinion that there was no evidence to show that any other rate was a fair and equitable rate. In regard to the decree of the year 1903, he was of opinion that this was no evidence as it was not inter partes, the reason being that the ex-proprietor was not the predecessor in interest of the purchaser at the revenue sale.

2. In this appeal it is contended that that decree operates as res judicata between the parties. It was passed ex parte. That, however, does not affect the question. It is argued on behalf of the appellants that the purchaser at a revenue sale, though he is not a successor-in-interest of the ex-proprietor, has rights

which are not lower than those of the ex-proprietor but may be higher, as has been held in various decisions of this Court to which it "is not necessary to refer. Against that it is argued that the tenants cannot be bound by the decision" in the previous suit because the landlord would not be bound. No doubt mutuality is one of the tests of res judicata. But it is not sufficient to assert that the landlord would not be bound. The position requires, examination.

3. It would lead, to say the least, to great inconvenience if rights which have been settled in the Court between landlords and tenants should be liable to be upset every time an estate changes hands by reason of a sale under the Land Revenue Sales Act. It is also clear to my mind that the position of the purchaser at a revenue sale, at any rate in respect of his relations with his tenants, is not absolutely independent of that of the ex-proprietor. In fact conditions under the rent laws of this country are such as sometimes to lead to apparently peculiar results and the learned Judges in some cases have even gone so far as to hold that tenants who have been settled by a trespasser in possession are protected against the rightful proprietor. It would seem anomalous, after an arrangement has been come to by tenants with the rightful proprietor, that the arrangement should be liable to be upset if his estate happens to change hands by reason of his default in the payment of revenue.

4. Section 37 of the Land Revenue Sales Act provides that a purchaser at a revenue sale shall be bound by the same limitations as the ex proprietor in regard to tenants of certain classes. Now the defendant in the present case is an occupancy raiyat and under the last clause of Section 37 the purchaser at the revenue sale is not entitled to enhance rent in any way other than that in which the ex proprietor would have, been entitled to enhance rent. When the rent has been assessed there is a statutory presumption u/s 27 of the Bengal Tenancy Act that it is fair and equitable. That presumption is not affected by the fact that the estate changes hands. Then Sections 28 to 37 of the same Act describe in what circumstances rent may be enhanced. It is, therefore, perfectly clear, reading Sections 27 to 37 of the Bengal Tenancy Act with Section 37 of the Land Revenue Sales Act, that the incoming proprietor is subject to the same limitations imposed by the Bengal Tenancy Act in regard to suits for enhancement of rent as the ex proprietor, including the time limit imposed by Section 37 of the Tenancy Act.

5. The decree of the lower Appellate Court must be set aside and that of the first Court restored with costs proportionate to the success of the plaintiff.