

(1899) 02 CAL CK 0003

In the Calcutta High Court

Case No : Appeal From Appellate Decree No. 1079 of 1897

Sheikh Babar Ali

APPELLANT

Vs

Krishna Manini Dassi and Ganendra Mohun Ghose

RESPONDENT

Date of Decision : 07-02-1899

Acts Referred:

Citation : (1899) 02 CAL CK 0003

Judgement

1. The suit, out of which this appeal arises, was brought by the Plaintiff, the holder of a dur-putni tenure against the se-putnidar for arrears of rent for the period between Kartick 1302 and Jaista 1303 B. S. (October 1895 to May 1896). It appears that in execution of a decree other than a decree for arrears of rent the se-putni tenure had been put up for sale on the 9th December 1895 and purchased by one Baburam Mitter. That sale was confirmed on the 16th January 1896, but the purchaser did not, before the confirmation of the sale, pay into Court as required by sec. 13 of the Bengal Tenancy Act, either the landlord's fee or the fee for the service of notice of the sale on the landlord, nor has either of these fees been since paid.

2. The Defendant's answer to the suit was that under the sale of the 9th December 1895 her interest in the tenure had passed to Baburam Mitter and that she was therefore not liable for any rent which became due after that date. As to the period prior to that date she pleaded payment. But it is only with the former branch of her answer that we are now concerned.

3. Upon that question both the Courts below agreed in holding that the confirmation of the sale to Baburam Mitter effectually extinguished the Defendant's interest in the tenure, and they accordingly dismissed the suit in so far as it related to the rent for the period subsequent to the confirmation of the sale.

4. The question which we have now to decide is whether they were right or wrong in so doing. Sec. 13 of the Bengal Tenancy Act upon which this question turns provides so far as it is material that "when a permanent tenure is sold in

execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before confirming the sale under sec. 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlords' fee prescribed by the last foregoing section, and such further fee for service of notice of the sale on the landlord as may be prescribed." It was argued on behalf of the Appellant (the Plaintiff in the suit) that the effect of this section is to prohibit the confirmation of a sale, unless the prescribed fees have been previously paid into Court. For the Respondent it was contended, on the other hand, that the duty is cast on the Court of requiring the purchaser to pay those fees; that an omission on the part of the Court to discharge this duty amounts merely to the irregularity which is cured by the confirmation of the sale; that the language of the section is merely directory, and that this view is supported by a comparison of the language of sec. 13 with that of sec. 12 in which the duties of a Registering Officer are laid down.

5. It appears to us that the contention of the Appellant must prevail. The sale of permanent tenures of the kind now in question is regulated by the Bengal Tenancy Act by sec. 11 of which the general rule is laid down, that every permanent tenure shall, subject to the provisions of the Act, be capable of being transferred in the same manner and to the same extent as other immoveable property. Then follow sec. 12 which provides the rules subject to which a voluntary transfer of a permanent tenure may be made, and sec. 13 which provides similarly for the sale of a permanent tenure in execution of a decree other than a decree for rent. The law thus enacted has effected considerable changes in the law relating to the sale of permanent tenures dispensing as it does with the recognition of the sale by the landlord, as a condition to its validity. And we entertain no doubt that the more unfettered freedom of transfer confirmed by the Act was intended to be exercised, if at all, in strict conformity to the conditions which the Act prescribes, and that, unless those conditions are substantially complied with, the transfer is invalid and ineffectual.

6. Much stress was laid by the Respondent's pleader upon the absence from sec. 13 of express words of prohibition. This consideration is however to our minds by no means conclusive. A prohibition may be implied, although not conveyed in express language and although the enactment is silent as to the consequences of non-observances of the forms which it prescribes. The question is as to the intention of the legislature, and "where," as it is put by Sir P.H. Maxwell (Maxwell, on the Interpretation of Statutes, 3rd Edition, p. 518), "the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, no doubt can be entertained as to the intention." We certainly think that were we to hold that it is a matter of indifference, so far as concerns the validity of the transfer, whether the fees for which sec. 13 provides have or have not been paid prior to the confirmation of the sale, we should be defeating the obvious intention of the legislature and rendering nugatory the scheme which it thought fit, for reasons which are well understood, to substitute for the previous law on

the subject.

7. Nor are we pressed by the consideration upon which reliance was also placed that there is a change of phraseology in sec. 13, as compared with sec. 12, in which latter section clear words of prohibition are no doubt employed. That may be accounted for in various ways and does not by any means necessarily imply a change of intention on the part of the legislature. (See Maxwell, p. 452). What we have to look to is the substance of the matter, and we entertain no doubt that the legislature intended by enacting sec. 13 to prohibit the confirmation of a sale such as is contemplated by the section unless prior to the confirmation the purchaser has paid into Court the fees for which the section provides. We are, therefore, of opinion that the sale to Baburam Mitter was invalid and ineffectual as a transfer of the tenure from the Defendant; this being so, the decree appealed against must be set aside in so far as it affects the Plaintiff's claim for the period subsequent to the 16th January 1896, and the case must be remitted to the lower Appellate Court to be dealt with by it according to law. Costs to abide the result.