
(1937) 11 PAT CK 0028
In the Patna High Court

Sheikh Guhi Saudagar

APPELLANT

Vs

Bhutnath Banerjee

RESPONDENT

Date of Decision : 23-11-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Registration Act, 1908 — Section 17, 17(2)

Citation : AIR 1938 Patna 140

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—The appeal is against the decision of the District Judge allowing an appeal from the order of the Munsif disallowing an objection u/s 47, Civil P.C. The question is whether the interest which was put up for sale by the decree-holder was saleable.

2. Two matters were relied upon in evidence in proof of the fact that the holding was an occupancy holding, they being the Record of Rights and a com. promise in an action. The judgment-debtor objector is a transferee from the original occupancy raiyat without the consent of the landlord. There is no dispute that the original tenant was an occupancy raiyat, but the transfer being without the consent of the landlord, the landlord brought an action which was compromised. It was on the terms of that compromise that the learned Judge in the Court below relied for coming to the conclusion that it was an occupancy holding, and therefore was not saleable.

3. As regards the Record of Rights which if it had been relied upon by the Judge in the Court below, of course, would have been conclusive so far as this Court is concerned, that is to say, so far as regards the inferences which the Judge drew from that record. But it is irrelevant by reason of the fact that it referred to the interest held by the original tenant and did not refer to the interest held by the judgment debtor in this case; it is therefore immaterial.

4. The other matter, as I have stated, was the compromise and upon the

construction of that the Judge in the Court below has relied. The contention here is that the compromise was not admissible in evidence. It is contended that Section 17, Registration Act makes this document inadmissible in evidence. By Section 17 certain documents are required to be registered and later sections make the documents requiring to be registered, but which are unregistered, inadmissible in evidence. Sub-section (2) of Section 17 provides: "Nothing in Clauses (b) and (c) of Sub-section (1) applies to..."; then there is a list of documents in the following sub-clauses. Clause (vi) provides:

any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding,

5. Now, that sub-section providing "Nothing in Clauses (b) and (c) of Sub-section (1) applies to...", has been construed in a decision of this Court reported in *Sachindra Mohan Ghosh v. Ramjash Agarwalla* A.I.R.1932. Pat. 97. My brother, Fazl Ali J., in his judgment in that case has excluded only those documents which came under Clauses (b) and (c), i.e. "Other non-testamentary instruments...and non-testamentary instruments which acknowledge the receipt or payment of any consideration, etc". That construction makes this compromise granting as it did an interest in the land inadmissible in evidence.

6. The other facts which have been established in the case do not assist the objector. It cannot be that apart from the Record of Rights or apart from this compromise which I have held to be inadmissible in evidence, any occupancy interest was held by the objector.

7. In my judgment therefore, for those reasons, the order of the learned District Judge was erroneous; it will be set aside and the order of the trial Court restored. The appellant is entitled to his costs.