

(1938) 11 PAT CK 0028
In the Patna High Court

Shib Charan Gorain

APPELLANT

Vs

Raghab Santal and Others

RESPONDENT

Date of Decision : 04-11-1938

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 258

Citation : AIR 1939 Patna 171

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—I agree with the learned Judge in the Court below that it would be a shocking thing if the respondent, who is a perfectly innocent person, were deprived of his title by reason of the provisions of Section 258, Chota Nagpur Tenancy Act. The landlord brought an action for rent against a person who was not his tenant; a decree was obtained, the holding sold and purchased by the appellant who also was an innocent person, that is to say innocent of the fraud which was practised by the landlord or said to have been practised by the landlord with regard to these proceedings. One of the contentions which succeeded in the trial Court was that Section 258 was a bar to the suit.

2. I agree with the learned Judge of the Appellate Court and not with the view expressed by the trial Court and hold that Section 258 is not a bar, the plaintiff merely claiming what undoubtedly belongs to him, and I do not think that his ill-advised application to set aside the sale u/s 213 is a bar to his recovery of that property. The only other question argued is that the present appellant should be reimbursed the purchase price which it is said has now been withdrawn by the [landlord. I find it impossible to make an "order in his favour, i.e. in the appellant's favour, and it would be an order in his favour against the co-defendant. If the order could have been made justly against the respondent, it would have been a different matter. But the learned advocate argues that if the decree is set aside it would entitle him to go to the Revenue Court for the purpose of recovering the proceeds of, the sale, that is to say the purchase price.

3. The respondent, the real tenant I am now informed, has got possession and it is to the advantage of the appellant that I would make an order setting aside the decree in execution of which the sale took place. I do not decide however and I cannot decide in this case, whether the appellant, as he alleges, is entitled to go to the Be-venue Court to reimburse himself. With the modification indicated above, namely that the decree in the rent suit will be set aside.

4. I would dismiss the appeal with costs.