

(1943) 08 PAT CK 0015
In the Patna High Court

Sonu Lal and Others

APPELLANT

Vs

Bartram Keightley and Others

RESPONDENT

Date of Decision : 13-08-1943

Acts Referred:

Bihar Tenancy Act, 1885 — Section 163(2), 163(2)(b)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 64

Citation : AIR 1944 Patna 101

Hon'ble Judges : Shearer, J; Manohar Lall, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is an appeal by the judgment-debtor whose appeal was summarily dismissed by the learned District Judge. The only question for determination is whether the Court was bound to value the tenure which was sought to be put up for sale in execution of a decree for arrears of mokarrari rent for about Rs. 2600 obtained on 31st July 1941.

2. In the execution petition filed on 18th November 1941, the decree-holder valued the tenure at Rs. 2000. The judgment-debtor in his objection filed on 9th January 1942, stated that the valuation was Rs. 30,000. The Courts below" have taken the view that as the property which was being put up to sale was a mokarrari kaimi tenure, no duty was cast on the Court to determine its valuation and, therefore, ordered that the valuation stated by the decree-holder and also that stated by the judgment-debtor should be notified in the sale proclamation as allowed by the amendment to Order 21, Rule 66, Civil P.C.

3. In my opinion, the Courts below were in error in refusing to comply with the clear terms of Section 163 (2)(b), Bihar Tenancy Act. This Sub-clause enjoins that the proclamation which is to be issued shall, among other things, state the valuation of the tenure. Nothing could be clearer. But it is suggested that the valuation is only to be made in the manner hereinafter provided, that is to say, in the manner provided by Sub-clause (5), and as in that Sub-clause the word "tenure" does not appear, it is suggested that the Court need not value the

tenure. But this argument does not appear to be sound. Sub-clause (5) only comes into operation when the property to be sold is a holding and by valuing it or a part thereof the entire decree will be satisfied by the proceeds of the sale thereof. As the decree will thus be completely satisfied, an appeal is provided against an order under Sub-clause (5), but no appeal is provided against an order of valuation under Sub-clause (2)(b) when it relates to a tenure. This is because the Legislature, for some reason, did not think it advisable to protect the tenure-holder, and therefore they did not cast any duty on the Court to value either the whole of the tenure or a portion thereof in order to render full satisfaction of the decree by the sale proceeds. In various sections of the amended Bihar Tenancy Act, provisions are now to be found for the sale in execution of a decree of a portion of a holding, for instance, see Sections 158B, 159 and 162A, but nowhere in these or other sections provision is made for the sale of a portion of a tenure.

4. For these reasons I must hold that the Courts below were bound to value the tenure before ordering its sale in execution. Mr. Bose appearing for the respondents is apprehensive that the decree-holder may be compelled to purchase the tenure at the price which will now be fixed in the sale proclamation. He is afraid of the provisions of Section 163A, but it is clear to me that the provisions of that section do not apply where the property sought to be sold is not a holding or a portion of a holding. The learned advocate for the appellant also contended that under the provisions of Order 21, Rule 64, Civil P.C. the Court was bound to determine the valuation of a portion of the tenure and could it liked sell only a portion of the tenure. But, the answer to this contention is that the option in such a case is with the decree-holder who may ask for the sale of the entire tenure, as he generally will, or for a portion of the tenure. If the decree-holder desires to sell the entire tenure, I do not see how the Court can force him to sell only a portion of the tenure. Again, Section 163(2) clearly provides that the whole of the tenure is to be valued and it is distinctly provided by Sub-clause (1) that where the tenure is ordered to be sold in execution of a decree, the Court shall cause a proclamation of the intended sale to be made which by Sub-clause (2) among others shall contain the valuation of the tenure. The provisions of the CPC cannot, in my opinion, apply when the provisions of Section 163 are clear.

5. For these reasons I would set aside the decision of the Courts below and direct that the whole of the tenure should be valued and put up for sale in a manner authorized by law. It should also be stated here that we are informed that about Rs. 1000 has been paid by the judgment-debtor towards the satisfaction of the decree in execution. It is desirable that the learned Subordinate Judge to whom the record will be sent back should induce the parties to come to terms so that on paying the balance of the cereal dues at a convenient date the decree may be satisfied, in order to prevent the prolongation of this useless litigation. But if no compromise is arrived at within a reasonable time, the execution proceedings should be carried on forthwith to its termination in the executing Court.

Shearer J.

6. I agree.