

(1915) 04 CAL CK 0039
In the Calcutta High Court

Surendra Narayan Singh

APPELLANT

Vs

Mussammat Lachmi Koer and Another, Bhagalu Singh and
Another

RESPONDENT

Date of Decision : 09-04-1915

Acts Referred:

Bengal Tenancy Act, 1885 — Section 174

Citation : 29 Ind. Cas. 840

Hon'ble Judges : Sharfuddin, J;Richardson, J

Bench : Division Bench

Judgement

1. Rule No. 58 of 1915.

2. This Rule was issued on the opposite party to show cause why the order of the Munsif, dated the 22nd October 1914, should not be set aside on the ground that the opposite party was not the judgment-debtor within the meaning of Section 174 of the Bengal Tenancy Act.

3. It appears that the petitioner obtained a decree against an occupancy ryot for arrears of rent and in execution of that decree, the holding was sold on the 8th September 1914 and was purchased by the petitioner. On the 22nd October 1914 a deposit of the decretal amount was made by the wife of the transferee of the tenant in question and on that day in consequence of the deposit thus made, the sale was set aside, by the Munsif of Katihar in the following terms:

The judgment-debtor has deposited the entire decretal amount and compensation within time. Let the sale be set aside and the case dismissed after full satisfaction of claim.

4. The petitioner obtained the present Rule on the ground that Section 174 of the Bengal Tenancy Act under which the deposit in question was made, refers only to a deposit by the judgment-debtor himself and hence the transferee of the judgment-debtor does not come u/s 174 of the Act. It was contended that the deposit that was made by him was no deposit by the judgement-debtor and that

the sale, therefore, should not have been set aside.

5. In *Ranjit Kumar Ghosh v. Jogendra Nath Roy* 15 Ind. Cas. 561 : 16 C.L.J. 546 it was held that the application u/s 174 of the Bengal Tenancy Act can be made by the judgment-debtor alone and by no other person.

6. We, therefore, make the Rule absolute, set aside the order of the Munsif and confirm the sale.

7. This order will govern the other Rule No. 59 of 1915.