
(1926) 03 CAL CK 0056
In the Calcutta High Court

Sushila Sundari Choudhurani

APPELLANT

Vs

Tarak Chandra Roy Choudhuri and Others

RESPONDENT

Date of Decision : 16-03-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 15

Citation : 95 Ind. Cas. 489a

Hon'ble Judges : Graham, J;B.B. Ghose, J

Bench : Division Bench

Judgement

B.B. Ghose, J.—These three appeals arise out of three suits for rent. The plaintiff sued for his 15 gandas share of the rent making the co-sharer landlords parties to the suits. The present appeals refer to a question between the contending landlords. Both the Courts below have passed decrees in favour of the plaintiff. The appeals to "this Court are preferred by the pro forma defendant No 3 one of the co sharer landlords. The facts are these: A tenure was held by one Gour and certain other persons of whom it is only necessary to name Bhagwan. Gour had 1-anna 10-gandas share. On his death, he left a widow Shyama Sundari and two sons Tarak and Raj ani. Each of the sons inherited 15-gandas share of the tenure. Raj ani died leaving his mother as his heir. Tarak's 15 gandas share in the property was purchased in execution of a decree against him by a third person and with this share we are not now concerned. Shyama Sundari who inherited Rajani's share died and, after her death, Tarak as the next reversioner of Rajani inherited Rajani's 15 gandas share and he is now the plaintiff suing for his share of the rent. The contesting defendants' case is this: The superior landlord the Maharaja of Tipperah brought a suit for rent against Bhagwan and the other tenants under him with regard to the tenure. In that suit, he obtained a decree and, in execution thereof, the tenure was sold. At that sale, the appellant purchased the tenure and her contention is that the interest which Tarak had in the property passed to her by virtue of the auction-purchase. In the rent suit by the Maharaja of Tipperah Shyama Sundari was made a party. The suit was brought on the basis of a Record of Rights made under the Bengal

Tenancy Act, but Shyama Sundari was not a party to the proceeding in connexion with the "Record of Rights. In the rent suit, she contended that she was not bound by the "proceedings taken in the Record of Rights. On her objection, her name was struck out from the category of defendants in the rent suit and the order of the Court was that the rent suit would proceed as if Shyama Sundari was not made a party. The question is whether under these circumstances, the whole tenure passed including the interest of Tarak at the auction-sale. It is, contended on behalf of the appellant that on the death of Gour, his heirs were bound to notify their succession u/s 15 of the Bengal Tenancy Act and, when Shyama Sundari succeeded to the property as the heir of her son Rajani, she was also bound to notify her succession and as she had not done so, the landlord could proceed against the surviving tenants whose names were recorded in his she rista and sell the entire tenure; or, in other words, the omission to notify the succession u/s 15 would have this result that the landlord might consider that the only recorded tenants were the co-sharers of Gour and he might bring a suit and sell the entire, tenure ignoring the name of Gour. The answer to this contention plainly is that the omission to notify succession to a permanent tenure has only this result, as provided by Section 16 of the Act, that the person succeeding to the tenure shall not be entitled to recover by a suit or any other proceeding any rent payable to him by the subordinate tenants. The omission does not affect his interest in the tenure in any other way. The landlord, however, it may be conceded is entitled to sell the tenure in execution of a rent decree against his recorded tenants; but, if one of the recorded tenants is dead, he cannot by omitting his name in a suit brought for the rent of the tenure affect the interest of the heirs of the deceased tenant. The landlord must do one of two things. He must proceed either against the recorded tenants or against the real tenants who are in actual occupation of the tenure. It does not stand to principle that the right of a person should be affected by a decree obtained against third persons unless it is allowed by any law. No authority or enactment has been brought to our notice under which the right of an absent party can be so affected by a decree. It is true it was laid down in the case of *Khetter Mohan Pal v. Fran Kristo Kabiraj* 3 C.W.N. 371 that it is the duty of a person succeeding to a permanent tenure to notify the landlord about his succession. But that observation, was made in a suit for rent where it was contended that the suit was defective and should be dismissed because the heir of the deceased person had not been made a party. It was held in that case that the suit was not defective and that is quite in accordance with the principle now laid down by a Pull Bench of this Court. That case is an authority for the proposition that in execution of a decree obtained the rights of the absent heirs of a deceased person should be affected. I think, therefore, on principle it must be held that the interest of Shyama Sundari did not pass by the sale in execution of a rent decree obtained by the superior landlord--the Maharaja of Tipperah. It was contended as a last resort by Babu Brojo Lal Chakravarty who appeared for the defendant-appellant in these appeals that the fact that Shyama Sundari omitted to notify her succession to the landlord showed that she allowed her other co-sharers to

represent her in the sherista of the landlord. The answer to that contention is that the question whether or not certain persons were held out as representatives of another tenant is a question of fact, and in these cases, there is no ground for supposing that Shyama Sundari allowed her co-sharers to represent her because she was made a party to the rent suit and she objected that she was not bound by any proceeding under the Record of Rights which was taken in her absence. On that ground her name was removed from the category of defendants. The appeals, therefore, fail and are dismissed with costs.

Graham, J.

2. I agree.