

(1912) 06 CAL CK 0065
In the Calcutta High Court

Thakur Madan Mohan Nath Sahi Deo

APPELLANT

Vs

Maharaja Pratap Udai Nath Sahi Deo

RESPONDENT

Date of Decision : 21-06-1912

Acts Referred:

Bengal Rent Recovery Act, 1885 — Section 5
Chota Nagpur Landlord and Tenant Procedure Act, 1879 — Section 123
Chotanagpur Tenancy Act, 1908 — Section 208(1)

Citation : 15 Ind. Cas. 842

Hon'ble Judges : Beachcroft, J; Ashutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This appeal raises a question of first impression as to the construction of Section 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879. It appears that the respondent obtained a decree for rent against the appellant in respect of a tenure on the 19th April 1905. On the 28th November 1910, the application for execution now under consideration, was presented. The judgment-debtor, tenure-holder, had created, on a part of his tenure, encumbrances by way of maintenance grants in favour of his dependents. The properties of these maintenance holders were at the time under the charge of the Encumbered Estate Act Authorities. They applied for exemption of the villages comprised in the maintenance grants u/s 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879. Upon the recommendation of the Deputy Commissioner, the order of exemption was made by the Commissioner on the 30th March 1911. The question in controversy now is, what is the precise effect of this order of exemption.

2. Before we determine this question, it is necessary to consider, in the first instance, by what statutory provisions the matter before us is governed. The Commissioner made his order for exemption ostensibly u/s 203 of the Chota Nagpur Tenancy Act, 1908. In our opinion, the order in question could not have been made under that section, but this does not affect the validity of the order inasmuch as it could have been made u/s 123 of the Chota Nagpur Landlord and

Tenant Procedure Act, 1879. Sub-section (1) of Section 208 of the Chota Nagpur Tenancy Act, 1908, shows that the provisions contained therein apply to cases of execution of decrees passed by the Deputy Commissioner under that Act. The decree now under execution was passed prior to the commencement of the Chota Nagpur Tenancy Act, 1908. Consequently, u/s 8, Clause (e) of the Bengal General Clauses Act, 1899, the provision applicable is that contained in Section 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, and the effect of that section we now proceed to consider.

3. Section 123 provides that if the decree, of. which execution is sought, for arrears of rent in respect of a tenure, the decree-holder may make an application for the sale of such tenure, and the tenure may thereupon be brought to sale in execution of the decree, according to the provisions for the sale of under-tenures contained in the Bengal Rent Recovery Act, 1865, and all the provisions of that Act shall, as far as may be, apply. This is followed by a proviso to the effect that the Commissioner may by order in any case in which he may consider it desirable so to do, prohibit the sale of any tenure or portion thereof.

4. On behalf of the judgment-debtor, it has been contended that the effect of an order of exemption of a portion of a tenure by the Commissioner is to make it impossible for the decree-holder to execute the decree as a decree for rent under the Bengal Rent Recovery Act, 1865. It is plain that the effect of an order of exemption of a part of the tenure is not to deprive the decree-holder entirely of his right to execute the decree; for if that had been the consequence, the effect would have been the same as if the entire tenure had been exempted from sale. We take it, therefore, that notwithstanding the order for partial exemption, it is open to the decree-holder to execute his decree. The real question in controversy is, whether, on an order for partial exemption, the decree is to be executed as a decree for money or as a decree for rent. On behalf of the appellant, it has been argued that the order for exemption can be made in respect of a part of the tenure only where the decree-holder seeks to execute a decree for rent of a fraction of a tenure, and in support of this view, reference has been made to the case of *Dwarka Nath Chuckerbutty v. Dhun Monee Chowdrain* 15 W. R. 524. That case, in our opinion, has no application; it merely shows that when a share of a tenure has been treated as an independent and self-contained tenancy, in an execution of a decree for rent due in respect thereof, the property may be sold as if it were an entire tenure. But it is plain that the provisions of Section 123 cannot be restricted in the manner suggested, because if that was the only case where an order for partial exemption could be made, that would really be a case for application for sale of. what constituted an entire tenure, and the prohibition would in substance be of the sale of such a tenure. Section 123 plainly covers a case of the description now before us, when an application is made for the sale of all the villages comprised in a tenure, but the Commissioner, for reasons sufficient in his opinion, directs the exemption of some of the villages from the sale. In such a case, it is plain that the sale of the unexempted portion is still to take place under the Bengal Rent Recovery Act of 1865; in other words, the

restrictions in the proviso do not affect the provisions in the substantive part of the section for the sale of the property. Reliance, however, has been placed upon Sections 4 and 16 of the Bengal Rent Recovery Act, 1885, to show that the Legislature contemplated that sales under that Act should be sales of entire tenures. It may also be conceded, as laid down by the Full Bench in *Sham Chand Mitter v. Juggut Chunder Sircar* 15 W.R. 524, that, ordinarily, when a sale takes place of an entire tenure under the Bengal Rent Recovery Act, 1865, the purchaser acquires the property free of all encumbrances. But there is, in our opinion, no inconsistency between the proviso to Section 123 of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, and the provisions of the Bengal Rent Recovery Act, 1865. It was competent to the Legislature to lay down that a sale u/s 123 " would be a sale under the Bengal Rent Recovery Act of 1835, notwithstanding the fact that what was sold was not the entire tenure but only the unexempted portion thereof. This, we think, is the result of the legislative provisions on the subject. If the contrary view were maintained, the result would be that by an order of exemption, the landlord decree-holder would be practically deprived of his security for the rent. If the sale of the unexempted portion was merely the sale of the right, title and interest of the judgment-debtor, the property might not be saleable at all, and a purchaser might not be found willing to bid a sufficient sum for the satisfaction of the judgment-debt. The Legislature could not have intended that because, as in the case before us, an order of exemption is made for the benefit of persons whose title has been created by the defendant under circumstances which could not be controlled by the landlord, the landlord practically loses his security for the arrears of rent due to him. We hold accordingly that the effect of a sale, of the un-exempted portion, is to pass the property to (2) 22 W. R. 541. the purchaser free of all encumbrances. When the purchaser has obtained the property, what his precise position will be, that is, whether he will be, jointly with the holder of the exempted portion of the property, liable for the whole rent is a matter which does not require consideration at this stage. It is conceivable that the purchaser may with good reason contend that as the landlord, though under compulsion, has brought to sale some only, of the villages included in the tenure, he is bound to apportion the rent; the consequence of such a sale, if the view suggested is well founded, may be that the tenure is ultimately split up into two distinct tenures. These, however are matters which must be left open for consideration, if and when the contingency arises. It is sufficient for us to find now that the entire decree may be executed as a decree for rent against the unexempted portion of the tenure, and that the auction-purchaser will acquire the status of a purchaser u/s 16 of the Bengal Rent Recovery Act, 1865. The view put forward by the judgment-debtor appellant, therefore, cannot be accepted.

5. A minor question has been raised in the appeal and requires only a brief consideration. It has been suggested that the sale proclamation was not properly drawn up and that it was not competent to the decree-holder to set out in the sale proclamation the amount of rent that might be legitimately levied from the

villages sought to be sold and the villages exempted respectively. Reference has been made in this connection to section. 5 of the Bengal Rent Recovery Act, 1865. That section provides that the notice of sale shall specify, in the words used in the plaint in the suit in which the decree was made, the name of the village, estate and" purgunnah or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure and the gross amount recoverable under the said decree." It is clear that in the case before us, the decree-holder was not bound to apportion the rent that might be leviable from the exempted and unexempted villages respectively. He would have strictly complied with the provisions of Section 5, if, in the words of the section, he had stated-yearly rent payable in respect of the entire tenure together with a note that the villages named were exempted from sale under the order of the Commissioner., The judgment-debtor," therefore, cannot reasonably complain of what has been done by the decree-holder. At any rate, as a new sale proclamation is to be issued, we direct that it be drawn up in strict conformity with Section 5 of the Bengal Rent Recovery Act, 1865. The rent will not be apportioned, the rent payable annually in respect of the whole tenure will be stated together with a note that certain specified villages were exempted from sale.

6. The result is that this appeal fails and is dismissed with costs. We assess the hearing-fee at ten gold mohurs.