

(1912) 06 CAL CK 0082
In the Calcutta High Court

Yusuf Gaze

APPELLANT

Vs

Asmatullah and Others

RESPONDENT

Date of Decision : 13-06-1912

Acts Referred:

Bengal Tenancy Act, 1885 — Section 167

Citation : 15 Ind. Cas. 430

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

Bench : Division Bench

Judgement

1. In support of this appeal, the following points have been raised: first, that, in Section 167 of the Bengal Tenancy Act, the words "date of the sale" mean not the actual date of the sale but the "date of the confirmation of the sale". To support this contention, we have been referred to the provisions of Section 169 of the same Act and we are also informed that the provisions of the Sale Law go to support this view. It is only necessary to point out that Section 169 was amended by the introduction of the words "date of the confirmation of the sale" for date of the sale" and that, in the section referred to, Section 167, the date expressly mentioned is the date of the sale" and not the date of the confirmation of the sale". In the Act XI of 1859, Section 33, the period within which a suit must be brought is expressly stated to be within one year from the date of the sale becoming final and conclusive". No other authority has been laid before us to support the contention that the words "date of the sale" in Section 167 must be read as the date of the confirmation of the sale and we see no reason to differ from the finding of the lower Appellate Court on this point.

2. Next, it has been urged that the Judge of the lower Appellate Court was in error in supposing that the plaintiff had notice of the encumbrance before the month of June in the year in which the notice was served. The learned Subordinate Judge, on reviewing the facts, has come to a finding of fact that it is clear that the plaintiff had information that persons other than the debtor were cultivating the land and, in such circumstances, it was certainly necessary for the

plaintiff to ascertain in what capacity those persons were cultivating the land so as to ascertain whether or not there was any encumbrance on the land. The learned Counsel for the appellant seems to suggest that the words "has notice" in Section 167 mean "has received a notice". We think there is no justification for that suggestion and that "has notice" means has knowledge or information. In this case, the lower Appellate Court has found that the plaintiff had knowledge or information that there was an encumbrance on the holding more than a year before the service of the notice and we see no reason to differ from it.

3. Lastly, it has been suggested that the responsibility for the service of the notice u/s 167 of the Tenancy Act rested with the Collector and not with the plaintiff, the purchaser, and that, after he had presented to the Collector his application for service of the notice, from that date the encumbrance must be considered to have been annulled. This is not in accordance with the provisions of the Act nor is it, in our opinion, an argument which can be maintained. The notice was presented to the Collector for the purpose of service on the encumbrancer; but, at the same time, it was the duty of the person presenting the notice to give the Collector such assistance as was necessary to enable him to serve it on the person for whom it was intended. The law expressly provides that the encumbrance shall be annulled from the date on which the notice is served on the encumbrancer and not from the date on which the application is made to the Collector.

4. These are the three main points taken in support of the appeal and, in our "opinion, they fail. The lower Appellate Court appears to have gone carefully into the case and we see no reason whatever to differ from the conclusion at which that Court has arrived. The appeal must, therefore, be dismissed with costs.