

1915
 JANARDAN
 KISHORE
 LAL
 r.
 SHIB
 PERSHAD
 RAM.
 FLETCHER J.

case that the second suit now under appeal, that is, the suit which forms the subject matter of appeal No. 208 of 1913, was not instituted until after the former suit had been finally determined by the Court of first instance. If the plaintiffs intended to proceed by way of amendment or otherwise, they ought to have made the application to the Court of first instance before the institution of the second suit. I see no reason which would lead us to assent to the present application. The application seems to me to be altogether a novel one. I think, therefore, that the present application should be dismissed with costs.

TEUNON J. I agree.

S. M.

Application refused.

CIVIL RULE.

Before Sharfuddin and Richardson, JJ.

1915
 April 9.

SURENDRA NARAYAN SINGH

v.

LACHMI KOER.

*Deposit in Court—Judgment-debtor—Transferee of the judgment-debtor—
 Bengal Tenancy Act (VIII of 1885), s. 174—Sale, setting aside of.*

An application under s. 174 of the Bengal Tenancy Act can be made by the judgment-debtor alone and by no other person.

Ranjit Kumar Ghosh v. Jogendra Nath Ray (1) referred to.

* Civil Rules Nos. 58 and 59 of 1915, against the order of Sheikh Rahaman, Munsif of Katihar, dated Oct. 22, 1914.

(1) (1912) 16 C. L. J. 546.

RULE obtained by Surendra Narayan Singh, the decree-holder (petitioner).

Shortly stated the facts are these. The petitioner obtained a decree for arrears of rent. In execution of that decree the tenant's holding was sold and the petitioner purchased that holding. The holding, according to local usage and custom, was non-transferable. A transferee by purchase of the part of the non-transferable holding deposited the decretal amount, and the sale was set aside. Against this order the petitioner moved the High Court and obtained this Rule.

Dr. Dwarka Nath Mitra (with him *Babu Rishindra Nath Sarkar*), for the petitioner, submitted that the sale could not be set aside. The deposit was not made by the judgment-debtor as contemplated by s. 174 of the Bengal Tenancy Act. O. XXI, r. 89 of the Civil Procedure Code has no application whatever: *Ram Nath Maity v. Rudra Mahanti* (1), *Ranjit Kumar Ghosh v. Jogendra Nath Ray* (2).

SHARFUDDIN AND RICHARDSON JJ. 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 s. 174 of the Bengal Tenancy Act.

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

(1) (1913) 18 C. L. J. 142.

(2) (1912) 16 C. L. J. 546.

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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."

The petitioner obtained the present Rule on the ground that s. 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 under s. 174 of the Act. It was contended that the deposit that was made by him was no deposit by the judgment-debtor and that the sale therefore should not have been set aside.

In *Ranjit Kumar Ghosh v. Jogendra Nath Ray* (1), it was held that an application under section 174 of the Bengal Tenancy Act can be made by the judgment-debtor alone and by no other person.

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

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

S. K. B.

Rule absolute.

(1) (1912) 16 C. L. J. 546.