

APPELLATE CIVIL.

Before N. R. Chatterjea and Sheepshanks JJ.

NARAYANI

v.

NABIN CHANDRA CHAUDHURI.*

1916

Aug. 30.

Occupancy Holding—Transferability—Attachment—Objection of raiyats—Consent of landlords.

A non-transferable occupancy holding or a part of it cannot be sold in execution of a decree for money obtained against the raiyat when the raiyat objects to the sale on the ground of non-transferability, even if the landlords give their consent to the sale.

The above rule does not, as expressly laid down by the Full Bench in *Dayamayi v. Ananda Mohan Roy Chaudhuri* (1), apply to a sale held in execution of a decree founded on a mortgage or charge voluntarily made by the raiyat.

Dayamayi v. Ananda Mohan Roy Chaudhuri (1) followed.

Badramessa Choudhrani v. Alam Gazi (2) referred to.

Ananda Das v. Rutnakar Panda (3), *Shakaruddin Choudhry v. Rani Hemangini Dasi* (4) commented on.

SECOND APPEAL by the judgment-debtor, Narayani Dassya.

The facts are shortly these. Certain raiyati holdings were, in the course of proceedings in execution of a money-decree, attached by the decree-holder. With reference to some of the holdings, he obtained the consent of the entire body of landlords to the attachment and sale. As to other holdings, he obtained the consent of those landlords having a 10

* Appeal from Order, No. 412 of 1915, against the order of S. E. Stinton, District Judge of Chittagong, dated May 17, 1915, affirming the order of S. C. De, Munsif of Patya, dated Dec. 23, 1914.

(1) (1914) I. L. R. 42 Calc. 172 ; (2) (1915) 19 C. W. N. 814.

18 C. W. N. 971.

(3) (1903) 7 C. W. N. 572.

(4) (1911) 16 C. W. N. 420.

annas 8 pies share. The judgment-debtor objected to the attachment and sale on the ground that the holdings were not transferable.

The Court of first instance found the holdings to be non-transferable. Accepting this finding, the lower Appellate Court overruled the foregoing objection of the judgment-debtor on the ground that "a non-transferable holding may of course be attached with the consent of the landlords and in the case of fractional landlords to the extent of their share," and dismissed the appeal.

From this decision the judgment-debtor preferred this appeal to the High Court.

Babu Kshitish Chandra Sen, for the appellant.

Babu Jogesh Chandra Roy and *Babu Chandra Shekhar Sen*, for the respondent.

Cur. adv. vult.

CHATTERJEA AND SHEEPSHANKS JJ. This appeal arises out of proceedings in execution of a decree. The decree-holder respondent in execution of a decree for money attached certain raiyati holdings belonging to the judgment-debtor. He obtained the consent of the entire body of landlords to the attachment and sale of some of the holdings, and with regard to some others he obtained the consent of the landlords representing a 10 annas 8 pies share. The judgment-debtor objected to the attachment and sale on the ground that they are not transferable. The holdings have been found to be non-transferable, but the Court of Appeal below has overruled the objection holding that a "non-transferable holding may of course be attached with the consent of the landlords and in the case of fractionable landlords to the extent of their share." The judgment-debtor has appealed to this Court.

1916

NARAYANI
v.
NABIN
CHANDRA
CHAUDHURI.

1916
 NARAYANI
 v.
 NABIN
 CHANDRA
 CHAUDHURI.

Now, the Full Bench in the case of *Dayamayi Dasi v. Ananda Mohan Roy Chaudhuri*(1) have laid down that an involuntary transfer, *i.e.*, a sale in execution of a money-decree, of the whole or part of an occupancy holding apart from custom or local usage, is operative against the raiyat where the raiyat with knowledge fails or omits to have the sale set aside. As pointed out in *Badrannessa Choudhrani v. Alam Gazi* (2), the question of the omission or failure to set aside the sale with knowledge thereof becomes material only where the sale is invalid and the raiyat has a right to object to it. The Full Bench decision therefore by implication holds that the raiyat is entitled to have a sale of the holding in execution of a money-decree set aside after it takes place, and that the holding cannot be sold in execution of such a decree where the raiyat objects to the sale before it takes place.

Before the Full Bench decision it was held that a sale in execution of a money-decree of an occupancy holding is valid and effectual if the sale is held with the consent of the landlord [see *Ananda Das v. Rutnakar Panda* (3)] and that even a share of a holding can be sold with the consent of the co-sharer landlords to the extent of their share [see *Shakaruddin Choudhry v. Rani Hemangini Dasi* (4)]. But the view taken in those cases can no longer be maintained having regard to the decision of the Full Bench, which, as stated above, impliedly lays down that a sale of an occupancy holding cannot be held in execution of a money-decree if the tenant objects to the sale. It is true the decree-holder has obtained the consent of the landlords. But in the case of a non-transferable holding, as the raiyat cannot confer a title upon

(1) (1914) I. L. R. 42 Calc. 172 ; (2) (1915) 19 C. W. N. 814.

18 C. W. N. 971.

(3) (1903) 7 C. W. N. 572.

(4) (1911) 16 C. W. N. 420.

the purchaser without the consent of the landlord, so the landlord alone by his own act and without the concurrence of the raiyat cannot create a title in the purchaser. The two must concur in order that the transfer may be valid. Having regard to the view taken by the Full Bench as to involuntary transfers, we are unable to hold that the entire holding or a part of it can be sold in execution of a money-decree if the raiyat objects to the sale, even if the landlords give their consent to such sale. It is needless to point out that this does not apply to a sale held in execution of a decree founded on a mortgage or charge voluntarily made by the raiyat in which case the transfer though involuntary is operative against the raiyat as expressly laid down by the Full Bench.

The appeal must accordingly be allowed, and the orders of the Courts below set aside. We make no order as to costs.

L. R.

Appeal allowed.

SPECIAL BENCH.

Before Sanderson C.J., Chaudhuri and Newbould JJ.

*In the matter of BONOMALLY GUPTA.**

Jury, trial by—Jurymen, communication with by stranger, and by Clerk of the Crown—Police Officer's presence near jury room—Communication of deliberation by jurymen before or after case is over—Habeas corpus, writ of—Jurisdiction—Criminal Procedure Code (Act V of 1898), s. 491—Letters Patent, 1865, cls. 25 and 26—Trial, vitiation of—Practice.

Per CURIAM : It is highly undesirable that a juror should have any communication with anybody who is not a juror upon the subject-matter of the trial. But the mere fact that one of them is addressed by a stranger, to whom apparently the juror makes no reply or whose remarks

1916

NARAYANI
v.
NABIN
CHANDRA
CHAUDHURI.

1916

Aug. 31.

* Application in Original Criminal.