

## LETTERS PATENT APPEAL.

Before Mookerjee and Beachcroft JJ.

SYEDUNNESSA KHATUN

v.

AMIRUDDI.\*

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April 23.

*Sale—Bengal Tenancy Act (VIII of 1885)—Sale of tenancy—Status of the decree-holder—Effect of the cessation of interest (partial or entire) of the landlord.*

Where the decree-holder continued to be the sole landlord at the date of the application for execution of the decree and in his character as landlord decree-holder took the necessary steps for the sale of the under-tenure in conformity with the statutory provisions, the effect of the execution sale is to pass the under-tenure to the purchaser, even though the decree-holder has lost his interest as landlord before the actual sale.

*Forbes v. Maharaj Bahadur Singh* (1) distinguished.

*Hem Chunder Bhunjo v. Mon Mohini Dassi* (2), *Chhatrapat Singh v. Gopi Chand Bothra* (3), *Srimant Roy v. Mahadeo Mahata* (4), *Khetra Pal Singh v. Kritarthamoyi Dassi* (5), *Prafulla v. Nasibannessa* (6) referred to.

APPEAL by Syedunnessa Khatun, the plaintiff, against the judgment of Mullick J.

This was an appeal in a suit for recovery of possession of land on declaration of title. The plaintiff obtained a decree for rent against an under-tenure holder. She executed the decree and at the execution she purchased the defaulting under-tenure. When she sought to recover possession of the property through Court, the present defendants refused to give up possession to her on the ground that they were in possession as holders of a subordinate under-tenure

\* Letters Patent Appeal, No. 137 of 1915, in Appeal from Appellate Decree No. 1666 of 1914.

(1) (1914) I. L. R. 41 Calc. 926.

(2) (1894) 3 C. W. N. 604.

(3) (1899) I. L. R. 26 Calc. 750.

(4) (1904) I. L. R. 31 Calc. 550.

(5) (1906) I. L. R. 33 Calc. 566.

(6) (1916) 24 C. L. J. 331.

lawfully created by the defaulter. The plaintiff, then, served a notice upon the defendants in accordance with the provisions of section 167 of the Bengal Tenancy Act and finally instituted the present suit for ejection of the defendants.

The defendants contended that inasmuch as the plaintiff had ceased to be the sole landlord, her half share of the interest as superior landlord having been sold in execution of a mortgage decree against her, the sale was not a sale under the Bengal Tenancy Act, but only a sale of the right, title, and interest of the judgment-debtor under the Code of Civil Procedure. The Court of first instance decreed the suit. On appeal, the Subordinate Judge affirmed the decree of the Court of first instance. On second appeal to this Court, Mr. Justice Mullick dismissed the suit. Hence this appeal under clause 15 of the Letters Patent.

*Maulvi A. K. Fazl Huq and Babu Kali Prasanna Piplai*, for the appellant.

*Babu Abinash Chandra Guha*, for the respondent.

*Cur. adv. vult.*

MOOKERJEE J. This is an appeal under clause 15 of the Letters Patent, from the judgment of Mr. Justice Mullick in a suit for recovery of possession of land on declaration of title. The case for the plaintiff is that, on the 19th February 1908, she obtained a decree for rent against an under-tenure-holder, that she executed the decree in accordance with the special procedure prescribed in Chapter XIV of the Bengal Tenancy Act, and that on the 15th February 1909, she purchased the defaulting under-tenure at the execution sale. When she proceeded to take possession of the property through Court on the 17th July 1909, the present defendants declined to deliver up possession to her on the allegation that they were in possession as holders

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of a subordinate under-tenure lawfully created by the defaulter. The plaintiff, thereupon, proceeded to annul the alleged incumbrance by service of notice in accordance with the provisions of section 167 of the Bengal Tenancy Act, and, subsequently on the 7th July 1911, instituted the present suit for ejectment of the defendants. The defendants pleaded that inasmuch as a half share of the interest of the plaintiff as superior landlord had been sold in execution of a mortgage decree against her on the 20th January 1909, and as, consequently, she had ceased to be the sole landlord on that date, the sale held on the 15th February 1909 operated, not as a sale under the Bengal Tenancy Act, but only as a sale of the right, title, and interest of the judgment-debtor under the Code of Civil Procedure. The trial Court overruled this contention and decreed the suit. On appeal to the Subordinate Judge, the decree of the Court of first instance was affirmed. On second appeal to this Court, Mr. Justice Mullick has held that the contention of the defendants must prevail, on the authority of the decision of the Judicial Committee in *Forbes v. Maharaj Bahadur Singh* (1), and in this view, he has dismissed the suit. The question of the effect of the execution-sale held on the 15th February 1909 is the sole point for consideration in the present appeal.

The history of judicial opinion on the question of the effect of the cessation, partial or entire, of the interest of a landlord on his right to enforce realisation of arrears of rent by sale of the tenancy under the special procedure prescribed in the Bengal Tenancy Act, may be briefly reviewed. In *Hem Chunder Bhunjo v. Mon Mohini Dassi* (2), the interest of the landlord ceased after he had obtained a decree for rent in respect of a saleable under-tenure. It was

(1) (1914) I. L. R. 41 Calc. 926. (2) (1894) 3 C. W. N. 604.

ruled by O'Kinealy and Ameer Ali JJ., that he could not thereafter bring the tenure itself to sale in execution of the decree in conformity with the special provisions of the Bengal Tenancy Act. In *Chhatrapat Singh v. Gopi Chand Bothra* (1), the landlord lost his interest after the institution of the suit for arrears of rent and before the decree was made in his favour. It was ruled by Macpherson and Ameer Ali JJ. that the decree so made had all the characteristics of a rent-decree under the Bengal Tenancy Act. In *Srimant Roy v. Mahadeo Mahata* (2), the landlord lost his interest before the institution of the suit for arrears of rent, by reason of the expiry of the term of his own lease. It was ruled by Harington and Brett JJ. that he could, in execution of his decree for rent, sell only the right, title and interest of the tenant as existing at the time of the sale. In this state of the authorities, the matter came before a Full Bench of this Court in the case of *Khetra Pal Singh v. Kritarthamoyi Dassi* (3). In that case, the landlord had parted with her interest after she had obtained a decree for arrears of rent and before she applied to execute the decree. It was ruled that the decree was capable of execution as a rent-decree at her instance. Sir Francis Maclean C.J. held that if at the time when the rent suit is instituted and the rent-decree made, the plaintiff is still the landlord, the decree is liable to be executed at his instance as a rent decree, notwithstanding that he has parted with his interest as landlord before he applies for execution. It may be observed that the Full Bench dissented from the decision in *Hem Chunder v. Mon Mohini* (4) which was indistinguishable on the facts. We come finally

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(1) (1899) I. L. R. 26 Calc. 750 ;  
4 C. W. N. 446.

(3) (1906) I. L. R. 33 Calc. 566.

(4) (1894) 3 C. W. N. 604.

(2) (1904) I. L. R. 31 Calc. 550.

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to the decision of the Judicial Committee in *Forbes v. Maharaj Bahadur Singh* (1). There, the landlord lost his interest before the institution of the suit for arrears of rent and was consequently not the landlord at the time when the decree was obtained or the application was made for its execution. A Division Bench of this Court, Rampini and Sharfuddin JJ. [*Maharaj Bahadur Singh v. Forbes* (2)], held that the decree operated as a decree for rent. The Court treated the decisions in *Hem Chunder v. Mon Mohini* (3) and *Srimant v. Mahadeo* (4), as overruled by the Full Bench in *Khetra Pal v. Kritarthamoyi* (5), although the facts of the case before the Full Bench were different from those of the case then before the Court in a material particular; namely, while in the one case the landlord had lost his interest before the institution of the suit for rent, in the other he lost his interest after he had obtained his decree for rent. The case was then taken up on appeal to the Judicial Committee, and the decision of this Court was reversed. In the elaborate judgment delivered by Mr. Ameer Ali who, it will be observed, was a party to the conflicting decisions in *Hem Chunder v. Mon Mohini* (3) and *Chhatrapat v. Gopi Chand* (6), the provisions of the Bengal Tenancy Act relating to rent were reviewed; but the Judicial Committee did not in express terms overrule the decision of the Full Bench in *Khetra Pal v. Kritarthamoyi* (5) and, proceeded, on the other hand, to observe that the High Court had fallen into an error in drawing an inference of law in support of their conclusion from a decision which was obviously based on facts different from those with which they had to deal. The facts of the case before us are substantially different

(1) (1914) I. L. R. 41 Calc. 926.

(2) (1908) I. L. R. 35 Calc. 737.

(3) (1894) 3 C. W. N. 604.

(4) (1904) I. L. R. 31 Calc. 550.

(5) (1906) I. L. R. 33 Calc. 566.

(6) (1899) I. L. R. 26 Calc. 750.

from those of the cases already mentioned, and, consequently, we are not called upon to consider the question which formed the subject-matter of reference to a Special Bench in *Prufulla v. Nasibannessa* (1), namely, whether the decision of the Full Bench has been in essence overruled by the decision of the Judicial Committee. As we have observed, we are not concluded here by any of the decisions just analysed, and we are not prepared to apply to this case isolated *dicta* from the judgment of the Judicial Committee pronounced in a case where the facts were in essential particulars different from those of the litigation before us; otherwise there would be a manifest abuse of judicial precedents which has been condemned by Lord Halsbury in *Quinn v. Leathem* (2), and by Lord Haldane in *Kreglinger v. New Patagonia Meat and Cold Storage Co.* (3). The view thus emphasised had been recognised many years earlier by Marshall C. J. in *Brooks v. Marbury* (4), where he observed that the language of a judicial pronouncement must be understood as spoken in reference to the facts under consideration and limited in meaning by those facts: *U. S. v. Burr* (5).

What, then, is the position of the parties, when tested from the point of view of principle? The plaintiff was the sole landlord at the date of the institution of the suit for arrears of rent, at the date of the decree, and at the time when the application for execution was made. The application was made in accordance with the special procedure prescribed in Chapter XIV of the Bengal Tenancy Act for execution of decrees for arrears of rent. Proceedings were thereupon taken under section 163 for simultaneous issue of

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(1) (1916) 24 C. L. J. 331.

(2) [1901] A. C. 495, 506.

(3) [1914] A. C. 25, 40.

(4) (1826) 11 Wheaton 78, 90.

(5) (1808) 4 Cranch, 470, 482, 488.

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writ of attachment and proclamation of sale, and it can not be disputed that this was done in strict conformity with the position of the decree-holder at the time. Does it, then, make any difference that the decree-holder lost a part of his interest as landlord before the sale was actually held by the Court? In our opinion, the answer must be in the negative. The legal effect of the sale should depend upon the status of the decree-holder at the time the proceedings for sale were taken by the Court at her instance. She was competent to ask the Court to bring the defaulting under-tenure to sale and to adopt for that purpose the measures prescribed by the statute. Those measures were duly adopted, and the property was brought to sale in conformity therewith. The respondents have not been able to invoke the aid of any intelligible principle by which the legal effect of the sale can, under such circumstances, be made to depend, not upon the true character of the proceedings in execution duly taken, but the relative situation of the parties at the moment of the sale. We are of opinion that, in a case of this description, where the decree-holder continued to be the sole landlord at the date of the application for execution of the decree, and, in his character as landlord decree-holder, took the necessary steps for sale of the under-tenure in conformity with the statutory provisions, the effect of the execution sale is to pass the under-tenure to the purchaser, even though the decree-holder has lost his interest as landlord before the actual sale.

The result is that this appeal must be allowed, and the decree of the Subordinate Judge restored with costs of both hearings in this Court

BEACHCROFT J. I agree.

S. K. B.

*Appeal allowed.*