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 INTERNATIONAL  
 CONTINENTAL  
 SAOUCHOUC  
 COMPAGNIE  
 v.  
 MEHTA &  
 Co.

undefended and the only directions necessary are that it will appear in the undefended list next Monday. It further follows from the foregoing that any proceedings taken as between the plaintiff company and Bhagatram Vadera after the filing of the written statement must also be treated as a nullity.

Attorneys for the plaintiff: *Fox & Mandal.*

Attorney for defendant: *J. M. Rakshit.*

A. P. B.

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### CIVIL RULE.

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*Before Panton and Mitter JJ.*

KRISHNA CHANDRA DUTTA CHOWDHURY

v.

DINA NATH BISWAS.\*

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 April 11.

*Patni—Unregistered purchaser of a patni-landlord's right to proceed against registered patnidar—Bengal Tenancy Act (VIII of 1885), section 170, applicability of—Objection to attachment by purchaser of judgment-debtor's interest—Civil Procedure Code (V of 1908), section 47, O. XXI, r. 53.*

Section 170 of the Bengal Tenancy Act has no application where only a portion of a tenure is attached in execution of a decree for arrears of the whole tenure.

*Chandra Sekhar Patra v. Rani Manjhee* (1) referred to.

Objections to attachment raised by a party to the suit in which the decree under execution was passed or by his representative fall within the scope of section 47 of the Code of Civil Procedure.

One who has purchased the judgment-debtor's interest prior to the decree for rent obtained by the landlord is bound by that decree and is, as such, a representative of the judgment-debtor within the meaning of section 47 of the Code of Civil Procedure.

*Surendra Narain Singh v. Gopi Sundari Dasi* (2) relied on.

\* Civil Revision Nos. 952 and 953 of 1926.

(1) (1899) 3 C. W. N. 386.

(2) (1905) I. L. R. 32 Calc. 1031.

Objections to attachment raised by a third party come under O. XXI, r. 58 of the Code.

Until registration of the name of the purchaser of a *patni* tenure is effected in the landlord's *sherista*, the transfer does not affect the *zemindar's* right and, in spite of the transfer, the landlord may ignore the transferee and may continue to hold the recorded tenant responsible for the rent and other obligations imposed upon the tenure.

*Joykrishna Mukhopadhyaya v. Sarfannessa* (1) and *Luckhinarain Mitter v. Khetro Pal Singh Roy* (2) relied on.

CIVIL RULES obtained by the claimants.

Ray Dinanath Biswas Bahadur, the decree-holder, opposite party No. 1, as the owner of certain *mchals* to the extent of 8 annas, created a *patni* tenure in respect of 7 annas share of his interest taken as sixteen annas in favour of the judgment-debtors, the Sanyals, who are also opposite parties in these Rules. The said judgment-debtors sold the said *patni* tenure created in their favour by registered *kabals* to the petitioners in these Rules on the 22nd Falgun, 1317 B. S. The decree-holder, notwithstanding notice of the purchase of the *patni* by the petitioners, sued the Sanyals for rent and obtained a decree on the 7th July, 1925. The decree-holder then put the said decree into execution and attempted to put the entire tenure to sale under Chapter XIV of the Bengal Tenancy Act, but execution was struck off on petitioner No. 2 paying a certain sum in partial satisfaction of the decree. A similar application for execution was thereafter made and dismissed for default. Subsequently, the decree-holder made the third application for execution of the decree, wherein he applied for attachment and sale of only one-fourth share of the tenure concerned under the provisions of the Code of Civil Procedure, asking that the execution be treated as an execution of a money-decree. The said one-fourth share of the tenure was attached. Thereupon

(1) (1888) I. L. R. 15 Calc. 345. (2) (1873) 20 W. R. 383.

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the petitioners preferred a claim to the said share under O. XXI., r. 58 of the Code of Civil Procedure. The Subordinate Judge rejected the claim, holding that the claim was not maintainable under section 170 of the Bengal Tenancy Act. Aggrieved by the said order, the claimants moved the High Court and obtained these Rules.

*Mr. Atul Chandra Gupta* (with him *Babu Jitendra Kumar Sen Gupta*), for the petitioners. The claim was preferred under O. XXI., r. 58, Civil Procedure Code. The lower Court rejected it on the ground that, as the decree sought to be executed was a rent-decree, the provisions of O. XXI, r. 58 did not apply to the cases in view of s. 170, Bengal Tenancy Act. The lower Court ignored the fact that O. XXI, r. 58 of the Code is excepted by s. 170 of the Bengal Tenancy Act only when a tenure or holding is attached in execution of a decree for arrears due thereon. In this case, what was sought to be attached was not the tenure, but only a share of the tenure. The Legislature did not mean to include a share of a tenure by the word 'tenure' in s. 170. See ss. 158B, 160, 161, 162 and other sections in Ch. XIV of the Bengal Tenancy Act, where s. 170 occurs. Moreover, in this case, the decree-holder specifically mentions in the petitions for execution that he sought to execute the decree as a money-decree and wanted to sell, not the tenure, but the right, title and interest of the judgment-debtor. Section 170 has no application to such cases: *Chandra Sekhar Patra v. Rani Manjhee* (1); *Bipra Das Dey v. Rajaram Banerjee* (2). The decree is also not a rent-decree and the petitioner being the purchaser of a tenure ought to have been made a party to the rent-suit in order that the decree might operate as a rent

(1) (1899) 3 C. W. N. 386.

(2) (1909) I. L. R. 36 Calc. 765.

decree: *Giris Chandra Guha v. Khagendra Nath Chatterjee* (1).

Section 170 of the Bengal Tenancy Act does not apply unless the decree sought to be executed is a rent decree within the meaning of the Bengal Tenancy Act; *Bibhuti Bhusan Rai v. Chinitas Makhhal* (2). See also *Amrita Lal Bose v. Nemai Chand Mukhopadhyaya* (3), *Hridaynath Das Chowdhry v. Krishna Prasad Sircar* (4) and *Baikanta Nath Roy v. Thakur Debendro Nath Sahi* (5).

*Babu Krishna Kamal Moitra*, for the opposite party. 'Tenure' in s. 170 of the Bengal Tenancy Act includes part of a tenure. See the definition in s. 3 (7) of the said Act. The decree is a rent-decree.

The landlord was entitled to proceed against the registered tenant and ignore everybody else. See Reg. VIII of 1819, s. 5 and *Luckhinarain Mitter v. Khettro Pal Singh Roy* (6). The original tenant would represent the transferee in the suit.

Section 170 of the Bengal Tenancy Act would apply when the decree sought to be executed is on the face of it a rent decree and the Court would not go into the question whether the decree is a rent-decree or not: *Amrita Lal Bose v. Nemai Chand Mukhopadhyaya* (3).

Moreover, the unregistered transferee of the *patni* is a representative of the judgment-debtor within the meaning of s. 47, C. P. C. The petitioner ought, therefore, to have filed his objections under s. 47, C. P. C. and not under O. XXI, r. 58, C. P. C.: *Surendra Narain Singh v. Gopi Sundari Dasi* (7). Hence, even if the reasons of the Court below are not correct,

(1) (1911) 16 C. W. N. 64.

(2) (1927) 45 C. L. J. 229.

(3) 1901) I. L. R. 28 Calc. 382.

(4) (1907) I. L. R. 34 Calc. 298.

(5) (1906) 11 C. W. N. 676.

(6) (1873) 20 W. R. 380.

(7) (1905) I. L. R. 32 Calc. 1031.

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the order rejecting the application under O. XXI, r. 58, C. P. C., is correct.

*Mr. Gupta*, in reply. The petitioner preferred a claim. He was not concerned whether s. 47 or O. XXI, r. 58, applied. The question was whether the claim was maintainable. The Court below rejected it on the ground that s. 170 of the Bengal Tenancy Act had no application. If the Court is satisfied that s. 170 has no application to the facts of this case, the Rules should be made absolute and the cases sent back to the said Court for dealing with the petitioner's claim.

*Cur. adv. vult.*

MITTER J. This Rule was issued on the opposite party to show cause why the order of the Subordinate Judge of Pabna, dated the 30th of July, 1926, refusing to entertain the claim of the petitioners under Order XXI, rule 58 of the Code of Civil Procedure, should not be set aside. The facts which have given rise to this Rule are:—

That Ray Bahadur Dinanath Biswas, who is the opposite party to the Rule, is the 8 annas owner of certain *mehals* and he created a *patni* tenure in respect of 9 annas share of his interest, treating the 8 annas as 16 annas, in favour of the Sanyals; that on the 22nd of Falgoon, 1317 B. S., the Sanyals sold the *patni* tenure by registered deeds of sale to the petitioners before this Court; that notwithstanding notice of purchase of *patni* by the petitioners, the *zemindar* brought a suit for rent in respect of the said *patni* against the Sanyals, who had parted with their interest in the *patni* at the date of the said suit and obtained a decree for arrears of rent on the 7th of July, 1925; that the decree-holder *zemindar* made 3 applications for execution, the last of which was

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on the 1st of May, 1926; that in this last application, the decree-holder, opposite party, instead of applying for attachment and sale of the *patni* tenure, under Chapter XIV of the Bengal Tenancy Act, applied for attachment and sale of only one-fourth share of the said tenure; that the said one-fourth share of the tenure was attached in pursuance of the application of the decree-holder and the petitioners preferred a claim to the attachment of the said share of the *patni* under Order XXI. rule 58, of the Code of Civil Procedure, before the Subordinate Judge of Pabna.

The learned Subordinate Judge rejected the claim holding that the claim was not maintainable by reason of the provisions of section 170 of the Bengal Tenancy Act. It may be mentioned here that the Subordinate Judge arrived at this conclusion 'not without great hesitation'. In support of this Rule, the learned advocate for the petitioners has argued that the decision of the Subordinate Judge is wrong and that he has put a wrong interpretation under section 170 of the Bengal Tenancy Act in holding that that section applies not merely when a tenure or holding is attached in execution of a decree for arrears due thereon, but also when a portion of a tenure is attached in execution of a decree for arrears of the whole tenure. It seems to us that this contention is right. Section 170 of the Bengal Tenancy Act runs as follows:

"Sections 278 to 283 (Order XXI, rr. 58—63) (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of the decree for arrears due thereon". The words "tenure" or "holding" mean—the whole of the tenure or holding and not part of the tenure or holding. The intention of the Legislature seems to be that in order to attract the operation of section 170,

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clause (1), not only should the decree be for arrears of rent of the tenure, but that it should be executed as a rent decree, *i.e.*, by the attachment and sale of the entire tenure. It is true that the word "tenure" includes a portion of the tenure, but, in order to understand the meaning of the section, the general scope of the chapter in which it occurs must be taken into consideration. Section 158 B (1), which is the first section of Chapter XIV of the Bengal Tenancy Act, says :

"Where a tenure or holding is sold in execution of a decree for arrears of rent due in respect thereof" (omitting immaterial portions) "the tenure of holding shall, subject to the provisions of section 22, pass to the purchaser, if such decree was obtained by (i) a sole landlord, or (ii) the entire body of landlords, or (iii) one or more co-sharer landlords who has, or have, sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the "suit".

In other words, the scheme of the chapter is that if a decree is a decree for rent, in the true sense of the term, then the entire tenure will pass in execution of such decree. Sections 160 and 161 deal with the encumbrances which a purchaser of the *entire* tenure cannot avoid except under certain conditions. Section 162 says "when a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 [Order XXI, r. 11 (2)] of the Code of Civil Procedure for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the *pargana*, estate and village in which the land comprised in the tenure or holding is situate, the

“yearly rent payable for the same and the total amount recoverable under the decree”.

This section also shows that attachment and sale of the entire holding was contemplated in execution of a decree for rent. It does not appear from any of the provision of the chapter that a portion of the holding could be sold, in execution of a decree for rent. We think, therefore, the contention of the petitioners should prevail. The point raised, however, is not covered by authority. It should seem, however, that there are observations in the case of *Chandra Sekhar Patra v. Rani Manjhee* (1), which would indirectly lend support to the view we take. There the question arose that, where a rent decree had been obtained and the defaulting tenure was attached, whether the provision of section 170 could apply? The learned Judges held that section 170 applied and made the following observations which are pertinent to the present question: “The lower Court has held that, as a matter of fact, he had attached the tenure in respect of which the arrears had been decreed. Some question has been raised before us to the effect that what was attached was not the tenure, but interest of the judgment-debtor in the land. Looking, however, at the terms of the application, we are not prepared to say that the attachment was not of the tenure itself”.

From these observations one can infer that if it could be shown in that case that the interest of the judgment-debtor in the tenure and not the tenure was attached, the Court would have answered the question in the negative and would have held that section 170 had no application to such a case. Whether I am right in drawing this inference or not from those observations, for the considerations to which I have referred

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as to the scope of Chapter XIV, I think the Subordinate Judge's view is wrong.

Although section 170 of the Bengal Tenancy Act does not bar the entertainment of the claim in the present case, Order XXI, rule 58 of the Code of Civil Procedure cannot govern the present case and the petitioners are not competent to prefer an objection to the attachment under the provision of the said Rule. The petitioners, as I shall show presently, are representatives of the judgment-debtors within the meaning of section 47 of the Code of Civil Procedure and objections to attachment raised by a party to the suit in which the decree under execution was passed or by his representative fall within the scope of section 47. Objections to attachment raised by a third party come under Order XXI, rule 58.

The tenure in question is admittedly a *patni* tenure. By section 3 of the Patni Regulation (VIII of 1819) the tenure is "capable of being transferred by "sale, gift or otherwise, at the discretion of the "holder, as well as answerable for his personal debts, "and subject to the process of the Courts of Judicature "in the same manner as other real property".

By section 5 of the Regulation, the transfer, however, is subject to the payment of fee and security to the landlord and until the conditions mentioned in the said section are fulfilled the landlord has a right to "refuse to register, and otherwise to give effect to "such alienations, by discharging the party transferring his interest from personal responsibility, and "by accepting engagements of the transferee".

It is open to the transferee to seek his remedy in the Civil Court to compel the *zemindar* to give effect to the transfer if the security tendered is not accepted by the landlord. But until the registration of his name has been effected the transfer does not affect the

*zemindar's* right and, in spite of the transfer, the landlord may ignore the transferee and may continue to hold the recorded tenant responsible for the rent and other obligations imposed upon the tenure. As has been pointed out by Sir Comer Petheram C. J. in *Joykrishna Mukhopadhyā v. Sarfannessa* (1) that until the fee (as required by section 5) has been paid, the *zemindar* shall not be bound to register the transfer and further than that, until the transfer has been registered, he shall not be bound to recognise the transfer in any way—that is to say, until his demand has been satisfied and the registration has been effected, the old tenant remains his tenant.

Their Lordships of the Judicial Committee in the case of *Luckhinarain Mitter v. Khetro Pal Singh Roy* (2) laid down that until the assignment has been registered or the assignee has been accepted by the *patnidar* as his tenant, the assignor is not discharged from liability and such liability may be enforced by the sale of the *dar-patni* in execution of a decree against him for the rent.

In the present case the petitioners, who have purchased the judgment-debtor's interest prior to the decree for rent obtained by the landlord are bound by that decree and as such are representatives of the judgment-debtors within the meaning of section 47 of the Civil Procedure Code. This view is in consonance with the view taken by this Court in the case of *Surendra Narain Singh v. Gopi Sundari Dasi* (3). The petitioners, therefore, being representatives of the judgment-debtors can raise objections to the attachment under section 47 of the Code. They cannot, as we have already stated, raise objection to the attachment under Order XXI, rule 58, as they cannot be said to

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claim the property on their own account as a third party (not being a party to the suit or his representatives) could raise. It has been suggested to us by the learned advocate for the petitioners that their application before the lower Court might be treated as one under section 47 of the Code and dealt with as such, but we are not prepared to do that, as the objections under section 47 might not stand on the same footing as objections to the claim under Order XXI, rule 58. The former class of objection may cover other\* and different grounds. We, therefore, discharge the present Rule and in doing so we observe that it will be open to the petitioners, if so advised, to raise objection to the attachment in question under section 47 of the Civil Procedure Code.

In the circumstances of the present case each party will bear their own costs.

This judgment will govern Rule No. 953 of 1926.

Let the records be sent down at once.

PANTON J. I agree.

S. M.

*Rules discharged.*