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made by the High Court and sanctioned by the Government of India under section 107 of the Government of India Act. It would, therefore, follow that this Rule has now the force of law. In that view of the matter, we think that the reasons given by the learned Sessions Judge of Khulna in his letter of Reference are sound, and we, therefore, accept the Reference, set aside the conviction and the sentences referred to therein and direct that the fines, if paid, be refunded.

A. C. R. C.

Reference accepted.

APPELLATE CIVIL.

Before Rankin C. J. and Page J.

FARIDPUR LOAN OFFICE, LIMITED.

1928.
 July 23.

v.

NIRODE KRISHNA RAY.*

Landlord and Tenant—Co-tenants—Representation—Effect of a sale in execution of a decree in which all co-tenants, including purchaser of share of one co-tenant, were not parties.

In a suit for rent, all the recorded tenants were impleaded; the purchaser of the interest of one of the co-tenants was not impleaded. There was no evidence in the case that the purchaser expressly represented to the landlord that the other co-tenants who were sued represented the entire tenure including the share that he had purchased, nor was there any evidence of his knowledge of proceedings for enhancement of rent subsequent to his purchase and before the rent suit.

Held that the interest of the defendant judgment-debtors only passed by the sale in execution of the decree in the suit for rent and the interest of the purchaser of the interest of one of the co-tenants remained unaffected.

APPEAL FROM APPELLATE DECREE on behalf of the plaintiff.

The appeal arose out of a suit for the establishment of the plaintiff's title to a third share of the

*Appeal from Appellate Decree, No. 1368 of 1926, against the decree of Gopal Das Ghosh, Subordinate Judge of Faridpur, dated Mar. 23, 1926, affirming the decree of Ashutosh Roy, Munsif of Faridpur, dated Dec. 21, 1925.

plaint lands, and for the recovery of lands appertaining to that share jointly with the defendants and for mesne profits.

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Defendant No. 2 and the *pro formá* defendants Nos. 3 to 6 held a tenure under the defendant No. 1. The share of defendant No. 2 was one-third. The plaintiff purchased this share in execution of a money decree on the 21st June, 1912. He took symbolical possession on the 14th October, 1912. The lands were all tenanted. Plaintiff never got actual possession and never collected rent from the tenants. The landlord's fee was not paid, and no notice of this transfer was served on the landlord (defendant No. 1). The record-of-rights was finally published in October, 1912, in which defendant No. 2 was recorded as a co-tenant. The defendant No. 1, in a case under section 105 of the Bengal Tenancy Act, got the rent of defendants Nos. 2 to 6 enhanced on compromise, and obtained an *ex parte* decree against those defendants. In execution of that decree, and without making the plaintiff a party to the suit or the execution, the landlord had the land sold and purchased it himself on the 20th December, 1918. The plaintiff never paid any rent, since his purchase, to the defendant No. 1 and the defendant No. 1 knew nothing of the plaintiff's auction-purchase. The plaintiff brought this suit on the 19th June, 1924, i.e., only one day remaining to complete the statutory bar of 12 years. During this long period the plaintiff did nothing to have the record-of-rights corrected or to have his name mutated in the landlord's *sherista* or to give notice of his purchase to defendant No. 1. The defendant No. 1 was in possession on the strength of his auction-purchase at the time the suit was filed.

The Munsif dismissed the suit, holding that the entire tenure passed by the auction-sale held in execution of the rent decree of defendant No. 1.

The plaintiff appealed and argued that under the provisions of section 1 of Bengal Act I of 1903, non-payment of landlord's fee would not invalidate the title of the plaintiff, and that the plaintiff was not

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bound to give notice of his purchase to the landlord (defendant No. 1) and that as the defendant No. 1 did not make him a party in this rent suit, the interest of the plaintiff remained unaffected by the sale held at the instance of defendant No. 1. The Subordinate Judge dismissed the appeal and confirmed the decision of the trial court.

Hence this appeal.

Mr. Bankim Chandra Mukherji (with him *Mr. Bansari Lal Sarkar* for *Babu Kamini Kumar Sarkar*) for the appellant. I rely on Bengal Act I of 1903, s. 1. The non-payment of the landlord's fee does not invalidate transfer after the Amending Act of 1903. Therefore, by the decree for rent only the interest of defendants Nos. 2 to 6 only was affected. The interest of the plaintiff remained unaffected. The Act was passed to give relief to transferees in such cases. See *Surapati Roy v. Ram Narayan Mukerji* (1). The case of *Profulla Kumar Sen v. Nawab Sir Salimulla Bahadur* (2), relied on by the court below is distinguishable on the facts and overlooks the provisions of the Amending Act of 1903.

Babu Saratkumar Mitra, for the respondent. The Amending Act contemplates only cases where the transferee is not at fault, and the landlord refuses to accept a registration fee. If it were otherwise the provisions of s. 12 of the Bengal Tenancy Act will be nugatory. The landlord is not expected to run about and find out whether there have been transfers. I rely on the case of *Profulla Kumar Sen* (2) and *Ali Mahamud v. Aftahuddin Bhuya* (3). The latter case distinctly refers to the Amending Act. If the Court dissents from these cases, it ought to refer the matter to a Full Bench. Read ss. 5 and 6 of the Bengal Tenancy Act together, and *Watson's Case* (4).

PAGE J. The plaintiff purchased the interest of one of several co-tenants of a transferable tenure.

(1) (1923) I. L. R. 50 Calc. 680; (3) (1915) 20 C. W. N. 355.
L. R. 50 I. A. 155. (4) (1869) 13 M. I. A. 160.

(2) (1918) 23 C. W. N. 590.

The purchase was made in June, 1912. In October, 1912, there was an entry made in the record-of-rights, recording his vendor as one of the co-tenants. In December, 1912, proceedings were taken by the landlord under section 105 of the Bengal Tenancy Act for enhancement of rent, and to those proceedings the original tenants, including the vendor of the plaintiff, were made parties. Enhancement was granted, and, in 1917, a suit was brought by the landlord against the original co-tenants for arrears of rent from 1913 to 1916. He obtained an *ex parte* decree on the 8th December, 1917, and the decree-holder himself purchased the tenure at the auction-sale pursuant to the decree on the 20th December, 1918. On the 19th of June, 1924, the plaintiff brought the present suit to establish his title to the share of the co-tenant from whom he purchased.

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The question which falls for determination is whether, in the circumstances obtaining in this case, the plaintiff is entitled to claim that the interest in the tenancy which he purchased did not pass by the sale.

Now, the ordinary law is that where a landlord sues some only of the co-tenants of a tenure, obtains a decree, and purchases the tenure in pursuance of the decree, all that he obtains by the purchase is the interest of the defendant judgment-debtors. But the whole tenure will pass under the auction-purchase pursuant to the decree if the facts warrant a finding that the tenants who were impleaded in the circumstances represented the whole estate. The question in this case is whether the facts justify such a finding. Now, there is no evidence and no finding that the plaintiff expressly represented to the landlord that the co-tenants who were sued represented the tenure including the share therein that he had purchased, and there is no evidence and no finding that the plaintiff knew of the proceedings relating to the record-of-rights, or those taken under section 105 of the Bengal Tenancy Act. In the circumstances

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obtaining in this case it does not appear that there was any evidence to justify a finding that the tenants who were sued represented the whole estate. In these circumstances the ordinary rule of law will apply, and the plaintiff is entitled to claim the share of the tenure which he has purchased.

The result is that the decrees of the lower courts cannot stand. There will be a declaration that the plaintiff is entitled to the share of the tenancy which belonged to the defendant No. 2 in the suit. He is also entitled to joint possession of the said share with defendant No. 1, and to mesne profits in respect of that share from defendant No. 1. The suit must be remanded to the trial court in order that the amount of the mesne profits may be ascertained. The plaintiff is entitled to his costs in all the courts.

RANKIN C. J. I agree.

Case remanded.

S. M.