

CIVIL REVISION¹

Before Jack and Mitter JJ.

PRIYAMBADA DEBEE

v.

BHOLANATH BASU.*

1932

Dec. 8, 12, 20.

*Jurisdiction—Material irregularity—Court, duty of, to shorten litigation—
Events subsequent to delivery of possession.*

A court acts with material irregularity in the exercise of its jurisdiction in refusing to look at events subsequent to delivery of possession.

It is the duty of the court, which still retains control of the judgment, to take such action as will shorten litigation, preserve the rights of both parties and best subserve the ends of justice.

Ramyad Sahu v. Bindeswari Kumar Upadhyay (1) referred to.

Courts have gone so far as to hold that in exceptional cases it is not only competent but it is the duty even of a court of appeal to take notice of events, which have happened since the order challenged in appeal was made.

CIVIL RULE obtained by the decree-holder.

The facts of the case and the arguments advanced at the hearing of the Rule appear fully in the judgment.

Sitaram Banerji and *Prakashchandra Basu* for the petitioner.

No one for the opposite party.

Cur. adv. vult.

MITTER J. This Rule is directed against an order of the Subordinate Judge of Burdwan, by which he allowed an application made under Order XXI, rule 100 of the Code of Civil Procedure by some of the opposite parties to the present Rule.

*Civil Revision, No. 826 of 1932, against the order of N. N. Mukherji, Subordinate Judge, Burdwan, dated July 9, 1932.

1932

*Priyambada
Debee*
v.
*Bholanath
Basu.*
Mitter J.

Sreemati Priyambada Debee, the petitioner in the present Rule, is the *patnidâr* of the *lot mahâl* Pingur in Burdwan. The opposite parties Nos. 1 to 10 claim to be the *sepatnidârs* of the said *mehâl*. She brought a suit for recovery of the *darpatni* rent for the years 1331 to 1334 B.S. against Praphulla Datta and others, the *darpatnidârs*. The suit was decreed and in execution of the rent decree she purchased the *darpatni* on the 2nd December, 1929.

The opposite parties made an application for setting aside the sale. That application was numbered as Misc. Case No. 28 of 1930. A compromise was arrived at between the parties and it was agreed that, if the opposite parties deposited the decretal amount by the 29th April, 1931, the sale would be set aside, otherwise the sale would be confirmed. The payment not having been made as agreed, the sale was confirmed on the 2nd May, 1931 and the petitioner took possession through court on the 9th July, 1931.

On the 6th August the opposite parties Nos. 1 to 10 applied under Order XXI, rule 100 of the Code of Civil Procedure.

The petitioner came to know on the 9th July, 1931 that the opposite parties Nos. 1 to 10 were in possession as *sepatnidârs* and she had a notice served on them under section 167 of the Bengal Tenancy Act to annul their incumbrance and the notice was served on the 16th January, 1932.

The learned Subordinate Judge allowed the opposite parties' application under Order XXI, rule 100 of the Code, and directed that the opposite parties Nos. 1 to 10 do recover possession from the petitioner.

The present Rule has been obtained by the petitioner against the order of the Subordinate Judge.

The Subordinate Judge in his judgment noticed the fact that the opposite parties disputed the allegations of the petitioner, (1) that the decree was a rent decree and (2) that the notice under section

167 of the Bengal Tenancy Act had been served, but proceeded to base his judgment on the assumption that the petitioner had established both these allegations, and held that, as at the date of their application under Order XXI, rule 100 the opposite parties were in possession on their account, their application should succeed and this notwithstanding the fact that at the time of the hearing of the application the *sepatni* had been annulled by notice duly served under section 167 of the Bengal Tenancy Act.

1932
 Priyambada
 Debee
 v.
 Bholanath
 Basu.
 Mitter J.

It is contended for the petitioner that the court below has acted with material irregularity in the exercise of its jurisdiction in refusing to look at events subsequent to delivery of possession. We are of opinion that this contention is right and must be given effect to. We think that it is the duty of the court, which still retains control of the judgment, to take such action as will shorten litigation, preserve the rights of both parties and best subserve the ends of justice. See *Ramyad Sahu v. Bindeswari Kumar Upadhay* (1). Courts have gone so far as to hold that in exceptional cases it is not only competent, but it is the duty even of a *court of appeal* to take notice of events, which have happened since the order challenged in appeal was made. Here, the event, *viz.*, service of notice, had been effected before the judgment was rendered in the proceeding under Order XXI, rule 100 and the *sepatni* had been annulled, as the notice was served within a year of the date of the confirmation of sale, so, at the date of the order, the *sepatnidárs* could not be held to be in possession on their account within the meaning of Order XXI, rule 100.

The opposite parties have not placed sufficient materials before the court to show that the *sepatni* was created before the *darpatni*, which was avoided by the sale, so as to entitle the court to hold that the *sepatni* was not an incumbrance created by the

1932

*Priyambada
Debee*
v.
*Bholanath
Basu.*
Mitter J.

defaulting *patnidâr*, and could not be avoided by the *patnidâr*. No *pâtâ* and *kabuliyat* are forthcoming with respect to the *sepatni* and it would seem from the evidence of Nalinakhya Basu, witness No. 1 for the applicant, that the *sepatnidârs* were paying the *darpatni* rent to the *patnidâr* under an arrangement with the *darpatnidâr* and that they pay Rs. 33 as *munafâ* to the *darpatnidâr*. All this would go to show that the *sepatni* was created by the defaulting *darpatnidârs* or their predecessors in interest and the incumbrance of the *sepatni* was annulled by notice under section 167 of the Bengal Tenancy Act.

It is unfortunate that the opposite parties have not appeared before this Court to show cause: but we have examined the records and we are of opinion that the Rule must be made absolute and the order of the Subordinate Judge must be set aside. The application of the opposite parties under Order XXI, rule 100 of the Code of Civil Procedure must be dismissed. There will be no order as to costs.

JACK J. I agree.

Rule absolute.

G. S.