

## CIVIL REVISION.

Before R. C. Mitter J.

MAHARAJ BAHADUR SINGH

v.

NARI MOLLANI.\*

1936  
Feb. 27.

*Landlord and Tenant—Suit for rent—Transfer of occupancy-holding pending suit—Execution—Claim by transferee, if maintainable—Bengal Tenancy Act (VIII of 1885), ss. 65, 170(1)—Code of Civil Procedure (Act V of 1908), O. XXI, r. 58.*

During the pendency of a suit by the landlord for recovery of rent of an occupancy holding, the tenant N transferred the holding to D. The landlord who had knowledge of the transfer did not add D as a party and obtained a decree against N. He sought to execute the decree under the special procedure as provided for in Chap. XIV of the Bengal Tenancy Act. D objected and preferred a claim under O. XXI, r. 58 of the Code of Civil Procedure.

*Held* that the decree was not a rent decree within the meaning of the Bengal Tenancy Act and D was not precluded under s. 170(1) of the Act from preferring a claim.

*Forbes v. Maharaj Bahadur Singh* (1) and *Krishnapada Chatterji v. Manadasundari Ghosh* (2) relied on.

CIVIL RULE obtained by the landlord.

The facts of the case and the arguments in the Rule appear sufficiently from the judgment.

*Naresh Chandra Sen Gupta* and *Urukram Das Chakrabarti* for the petitioner.

*Nirmal Chandra Chakrabarti* for opposite parties.

R. C. MITTER J. The question involved in this Rule is whether the learned Munsif, Second Court, Rampurhat, had jurisdiction to entertain a claim preferred by opposite party No. 2, Dolejannessa Bibi,

\*Civil Revision, No. 1359 of 1935, against the order of Syed Allah Hafiz, Second Munsif of Rampurhat, dated June 5, 1935.

(1) (1914) I. L. R. 41 Cal. 926 ;  
L. R. 41 I. A. 91.

(2) (1932) I. L. R. 59 Cal. 1202.

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under O. XXI, r. 58 of the Code of Civil Procedure, in Rent Execution Case No. 399 of 1935 started in that Court by the petitioner, Maharaj Bahadur Singh, against the opposite party No. 1, Nari Mollani. The learned Munsif entertained the same and allowed it.

On April 17, 1934, the petitioner instituted a suit for recovery of rent of an occupancy holding from opposite party No. 1 and one Radhika Prasad Mandal. The period for which rent was claimed in that suit ended with *Chaitra*, 1340. Radhika pleaded that he had no interest in the holding at any time and the suit was dismissed against him on that footing. The Court, however, passed a decree against opposite party No. 1 on January 30, 1935. It is this decree which was put into execution on March 1, 1935, in the aforesaid execution case under the special procedure provided for in Chap. XIV of the Bengal Tenancy Act.

The opposite party No. 1 had, during the pendency of the said suit for rent, transferred the entire holding to opposite party No. 2 by a registered instrument. The date of this transfer is May 26, 1934, corresponding to *Jaistha* 12, 1341. In her written statement, filed on June 28, 1934, opposite party No. 1 stated that she had transferred the holding to opposite party No. 2. The petitioner knew of the transfer but did not add opposite party No. 2 as a defendant in his suit for rent. The notice of the transfer prescribed by section 26C of the Bengal Tenancy Act and the landlord's transfer fee did not, however, reach the petitioner before the decree in the said suit for rent.

On April 4, 1935, opposite party No. 2 filed her claim under O. XXI, r. 58 of the Code of Civil Procedure.

It is admitted that if the decree which the petitioner obtained in his suit for rent was a rent decree within the meaning of the Bengal Tenancy Act which

could be executed under Chap. XIV of said Act the claim so preferred is not entertainable. The provisions of s. 170(1) of the Bengal Tenancy Act is clear on the point. If, however, it is a decree which cannot be executed under the procedure of Chap. XIV it is entertainable. The question in my judgment depends upon the question as to whether s. 65 of the Bengal Tenancy Act is attracted to the aforesaid decree. In the case of *Jitendranath Ghosh v. Manmohan Ghosh* (1), Sir George Lowndes in considering the effect of s. 170(1) of the Bengal Tenancy Act made the following observations :—

The effect of this provision is that there can be no investigation in execution proceedings held under Chap. XIV of the Tenancy Act, of claims by third parties to an interest in the tenure.....In their Lordships' view it is only arrears of rent that are charged by s. 65 upon the tenure, and it is only such arrears, that can be realised in execution by the sale of the tenure. Chapter XIV of the Act does not purport to enlarge or restrict the exercise of this right, but provides the machinery for working it out. If a landlord seeks to use this machinery for the recovery of something that is not rent, to the prejudice of a third party on whom the decree is not binding, it would be a manifest injustice to deny him the right to object, and it would require very clear words in the Act to induce their Lordships to impose this penalty upon him.

In order to decide the question whether the decree for arrears of rent obtained by the petitioner charged the tenure the position of opposite parties Nos. 1 and 2 on May 26, 1934, the date when the conveyance in favour of opposite party No. 2 was registered, must be considered. Section 26B of the Bengal Tenancy Act has made occupancy holdings transferable. The manner in which such a holding can be transferred by act of parties is laid down in s. 26C. The registering officer is not to admit to registration the conveyance till he is paid the landlord's transfer-fee and the notice of transfer intended for service upon the landlord through the Collector is put in. On these two things being done, he is to register the conveyance. In my opinion, as soon as the document is registered the title to the holding

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(1) (1930) I. L. R. 58 Cal. 301(309) : L. R. 57 I. A. 214(222).

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passed from the transferor to the transferee with retrospective effect from the date of the execution of the conveyance: the question whether the landlord is served with the notice of transfer by the Collector or the Collector sends him the landlord's transfer-fee or not is not material. It cannot be said that the transfer is complete as against the landlord only when he receives the notice of transfer and his fees from the Collector. This principle has been laid down in connection with transfers of permanent tenures under the provisions of s. 12 of the Bengal Tenancy Act which provisions are *pari materia* with ss. 26B and 26C. [*Kristo Bulluv Ghose v. Kristo Lal Singh* (1); *Chintamani Dutt v. Rash Behari Mondul* (2); *Surapati Roy v. Ram Narayan Mukerji* (3)]. Accordingly, on May 26, 1934, opposite party No. 1 ceased to be the petitioner's tenant and opposite party No. 2 became his tenant, although both of them remained liable to pay the arrears of rent (if due) claimed by the petitioner in his suit. This position is clear from the definition of a tenant given in s. 3. A person is a tenant as long as he holds the land under another person: he ceases to be a tenant as soon as he sells away all the lands of his occupancy holding.

The position then is that at the date of the suit brought by petitioner opposite party No. 1 was his tenant, but at the date of the decree she had ceased to be his tenant. He ceased to represent the holding from May 26, 1934. The decree obtained cannot bind the opposite party No. 2, for the doctrine of *lis pendens* does not apply. The petitioner's suit was to enforce a claim to a sum of money. In that suit no question of any right to immovable property was in question. As has been observed by my learned brother Mitter J. "a suit for rent" in respect of an agricultural holding "can hardly be regarded as "a claim to charge specific property" *Jaynal Abedin*

(1) (1889) I. L. R. 16 Cal. 642.

(3) (1923) I. L. R. 50 Cal. 680 (688);

(2) (1891) I. L. R. 19 Cal. 17.

L. R. 50 I. A. 155(161-2).

v. *Hyderali Khan Pani* (1). A decree obtained for arrears of rent can only charge the holding under s. 65 of the Tenancy Act, only if at its date the relationship of landlord and tenant between the plaintiff and the defendant subsists. In *Forbes v. Maharaj Bahadur Singh* (2), although the facts were that the plaintiff was the landlord who had parted with his *zemindari* before his suit for the arrears of rent which fell due when he was the landlord, the observations of the Judicial Committee are general. Mr. Ameer Ali examined the whole law on the subject and came to the conclusion that the charge under s. 65 on a permanent tenure attaches only if at the date of the decree the relationship of landlord and tenant had continued. The Special Bench in the case of *Krishnapada Chatterji v. Manadasundari Ghosh* (3) has also interpreted *Forbes'* case (2) to mean that. In my judgment, the petitioner before me cannot take the aid of the machinery provided for the enforcement of what are really rent decrees which charge occupancy holding—namely, the provisions of Chap. XIV—to which he is not entitled and thereby deprive the opposite party No. 2 from preferring a claim under O. XXI, r. 58 of the Code of Civil Procedure. I am cognisant of the fact that it may be contended that a landlord would be deprived of the security of the holding by the tenant selling the holding after the decree and just before its enforcement but that is a question which I have not to decide in this case. Possibly the addition of the transferee, whose liability for the arrears of his vendor's time is declared by s. 146 A of the Tenancy Act, in the execution proceedings would preserve the landlord's security. On the facts of this case where the opposite party No. 2 was not added to the rent suit in spite of the landlord's knowledge of the transfer the principles laid down in *Forbes v.*

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(1) (1927) I. L. R. 55 Cal. 701.

(2) (1914) I. L. R. 41 Cal. 926 ;  
L. R. 41 I. A. 91.

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*Maharaj Bahadur Singh* (1) and *Krishnapada Chatterji v. Manadasundari Ghosh* (2) prevent me from taking the view that the claim of opposite party No. 2 was inadmissible.

The result is that this Rule is discharged with costs. Hearing fee one gold mohur.

*Rule discharged.*

G. K. D.

(1) (1914) I. L. R. 41 Cal. 926 ;  
L. R. 41 I. A. 91.

(2) (1932) I. L. R. 59 Cal. 1202.