

CIVIL REVISION.

Before Bartley and Nasim Ali JJ.

KUNJA KAMINI RAY

v.

MANGAL CHANDRA AICH.*

1937

Dec. 1.

Bengal Tenancy—Pre-emption of occupancy holding by landlord—Bengal Tenancy Act (VIII of 1885), ss. 26 U, 26 F.

Under the provisions of the Bengal Tenancy Act, the landlord is entitled to have pre-emption from the transferee of an occupancy holding on payment of the consideration money as set out in the notice under s. 26C (2) (a) of the Act, where nothing is proved to have been paid within the meaning of the provisions of s. 26F (3) of the Act.

CIVIL RULES.

The material facts of the case and the arguments in the Rules appear sufficiently in the judgment.

Atul Chandra Gupta and *Bijan Behari Mitra* for petitioner in Rule No. 672 and the opposite party in Rule No. 954.

Naresh Chandra Sen Gupta and *Jitendra Kumar Sen Gupta* for the opposite party in Rule No. 672 and for the petitioner in Rule No. 954.

NASIM ALI J. The petitioners in Rule No. 672 of 1937, who are opposite parties in Rule No. 954 of 1937, are joint landlords of an occupancy holding which belonged to one Raj Mohan Das and one Haran Chandra Das. This holding was transferred by the *râiyats* to the petitioners in Rule No. 954 of 1937, who are opposite parties in Rule No. 672 of 1937, by a *kabâlâ* executed on May 18, 1936. At the beginning of this *kabâlâ* Rs. 200 is stated to be the sale price.

*Civil Revision, Nos. 672 and 954 of 1937, against the order of Tejendra Nath Basu, Fourth Munsif of Munshiganj, dated April 30, 1937.

1937

Kunja Kamini
Ray
v.
Mangal Chandra
Aich.
Nasim Ali J.

Towards the end of this document it is also stated that the vendors transferred the property on receipt in cash of the highest market value, namely, Rs. 200. In the body of this instrument of transfer one mortgage in favour of the transferee and another mortgage decree in favour of his son are recited and are stated to have been satisfied. The registering officer accepted Rs. 200 as the sale price of the holding and on that footing registered the document. This document was accompanied by a notice in which the consideration money was stated to be Rs. 200. On July 17, 1936, a notice was served on the landlords of the holding under s. 26C of the Bengal Tenancy Act. In this notice it was stated that the holding was sold for a consideration of Rs. 200 and that the landlords' fee of Rs. 40 was paid at the time of the registration of the *kabálá*. Thereupon the landlords filed an application before the Munsif of Munshiganj on September 2, 1936, under s. 26F of the Bengal Tenancy Act for transferring the holding to them. At the time of making this application for pre-emption the landlords deposited in Court the amount of the consideration money as stated in the notice served upon them together with compensation at the rate of 10 per cent. of such amount. The Court thereupon issued a notice upon the transferee under s. 26F, cl. (3), asking him to appear within a certain time and to state what are other sums he had paid in respect of the rent of the land for the period after the date of transfer or as the landlords' transfer fee or in annulling encumbrances on the property. The transferee, however, after the receipt of this notice did not state that he had paid any amount as contemplated by s. 26F, cl. (3). Thereupon the learned Munsif allowed the landlord's application for pre-emption on April 30, 1937, but directed them to deposit Rs. 2,036-10-9 together with 10 per cent. thereon as compensation and a further sum of Rs. 40 (landlords' fee) together with interest thereon at 12½ per cent. per annum from May 23, 1936. The landlords thereupon filed an application

in revision under s. 115 of the Code of Civil Procedure against this order and obtained Rule No. 672 of 1937. The transferee also filed another application in revision under s. 115 of the Code and has obtained the other Rule, *viz.*, No. 954 of 1937.

1937
 Kunja Kamini
 Ray
 v.
 Mangal Chandra
 Aich.
 Nasim Ali J.

The contention of the transferee is that the application for pre-emption under s. 26F is not maintainable in law and the learned Munsif had no jurisdiction to entertain it, inasmuch as there had been no transfer at all within the meaning of s. 26C, cl. (1) of the Bengal Tenancy Act. It was argued on his behalf that there was no transfer as the registration of the document was void. It was contended by the learned advocate for the transferee that the actual sale price was Rs. 200 plus the amount due on the mortgage in favour of the transferee as well as the mortgage-decree in favour of his son and as this entire consideration for the sale was not separately stated in the instrument of transfer and the instrument was not accompanied by a notice as required by s. 26C(2) of the Bengal Tenancy Act the registration was in contravention of statutory provisions and as such void. I am unable to accept this contention. In the instrument of transfer the amount due on the mortgage or on the mortgage-decree is not at all mentioned. On the other hand, there is a clear statement in the *kabálá* that the sale price is only Rs. 200. In the notice also Rs. 200 has been stated to be the sale price. In these circumstances, the registering officer was bound to accept Rs. 200 as sale price of the transfer as stated in the instrument of transfer for purposes of registration and to issue after registration the notice mentioning therein Rs. 200 as the sale price. The document was therefore validly registered as contemplated by s. 26C, cl. (2) of the Bengal Tenancy Act and the transfer cannot be said to be void in law. The landlords, therefore, had the right to make an application under s. 26F for pre-emption. The above being the only contention

1937
Kunja Kamini
Ray
v.
Mangal Chandra
Aich.
Nasim Ali J.

raised in support of this Rule (No. 954 of 1937) and the said contention having failed this Rule is discharged but without costs.

In support of Rule 672 of 1937, Mr. Gupta, on behalf of the landlords contended before us that the learned Munsif had no jurisdiction to order the landlords to pay anything more than what was stated in the notice served on them under s. 26C of the Bengal Tenancy Act. This contention must prevail. By s. 26C, cl. (2), the instrument of transfer is to be accompanied by a notice giving particulars of transfer in the prescribed form. The form prescribed shows that in the notice the amount of consideration for the sale is to be mentioned. This amount was mentioned to be Rs. 200 in the notice. The learned advocate appearing on behalf of the transferee opposite party contended that by operation of s. 26C, cl. (6) of the Act any sum which the transferee had paid or agreed to pay in satisfaction of the sale price was to be deemed to be the consideration money for the purposes of s. 26F and consequently the amount which the transferee paid or agreed to pay in satisfaction of the mortgage in his favour and of the mortgage-decree in favour of his son must be deemed to be a part of the consideration money for the purposes of s. 26F. This contention cannot be accepted. In the first place it must be shown that the amount was payable on account of a mortgage of the holding sold. In the second place it must be shown that a definite sum was payable. In the third place this sum must be entered in the instrument of transfer. In the present case it appears that so far as the mortgage in favour of the transferee is concerned it was in respect of a different property altogether and had nothing to do with the holding sold. So far as the mortgage-decree is concerned it appears that it directs a sale not only of the holding sold but also of other properties. Further the amount due on the

mortgage or the mortgage-decree was not entered in the instrument of transfer. The transferee therefore is not entitled to ask the Court to consider the amount payable on the mortgage or the mortgage-decree as part of the consideration for the purposes of s. 26F. Section 26C, cl. (6) clearly contemplates that the sum which is to be deemed to be a part of the consideration money for the purposes of s. 26F must be definitely stated in the instrument of transfer. If s. 26C(6) be read with s. 26F, sub-s. (2), the position becomes absolutely clear. That subsection lays down that the landlord, at the time of making his application under s. 26F, is to deposit in Court the amount of the consideration money as stated in the notice served on him together with compensation at the rate of 10 per cent. of such amount. If an amount is not stated in the instrument of transfer and in the notice issued under s. 26C the landlord is not bound to deposit it for pre-emption.

The deposit under s. 26F(2) has been admittedly made by the landlords in the present case. It is conceded by the learned advocate for the transferee opposite party that in this case no deposits are required under s. 26F, sub-s. (4)(b) and nothing was paid by the transferee in respect of rent after the transfer or in annulling incumbrances on the holding sold. The Court is, therefore, bound under the provisions of sub-s. (5) of s. 26F, to allow the landlords' application under s. 26F, and direct the deposit made to be paid to the transferee. The learned Munsif had, therefore, no jurisdiction under s. 26F to direct the landlords of the holding sold to deposit anything in excess of what was mentioned in the notice issued upon them under s. 26C of the Act.

Rule No. 672 of 1937 is, accordingly, made absolute. The order of the learned Munsif directing the petitioner landlords to deposit Rs. 2,036-10-9 together with 10 per cent. as compensation and also interest at 12½ per cent. per annum from May 23,

1937

*Kunja Kamini
Ray
v.
Mangal Chandra
Aich.*
Nasim Ali J.

1937
Kunja Kaninhé
Roy
v.
Mangal Chandra
Aich.
 ———
Nasim Ali J.

1936, is set aside. The application of the landlords for pre-emption under s. 26F of the Act will be allowed on the landlords' depositing a further sum of Rs. 40 together with interest thereon at $12\frac{1}{2}$ per cent. per annum from May 23, 1936, as directed by the Munsif.

This case is sent back to the learned Munsif. He is directed to fix a time within which the sum of Rs. 40 together with interest should be deposited by the landlords and then to make the order for pre-emption according to law after the deposit of the said amount.

The petitioners in Rule No. 672 of 1937 will get their costs, hearing fee being assessed at three gold mohurs.

BARTLEY J. I agree.

Rule No. 672 of 1937 absolute

A. K. D.