

## APPELLATE CIVIL.

1937

June 15, 17.

Before M. C. Ghose J.

NAGENDRA NATH SINGHA SHAHA RAY

v.

NIRANJAN PATRA.\*

*Landlord and Tenant—Decree for arrears of rent—Transferee of portion of holding not made party to suit, but joined as party in execution proceedings after landlord's knowledge of transfer—Sale, if passes the entire holding—Bengal Tenancy Act (VIII of 1885), Chap. XIV; s. 146A.*

Where a landlord obtained a decree for arrears of rent against the tenants, without making two purchasers of portions of the holding in execution of mortgage decrees parties to the rent suit, as he had then no knowledge of the purchase, but, after he received information of the same, he added the purchasers as parties to the execution proceedings,

*held* that the decree satisfied the condition laid down in s. 146A of the Bengal Tenancy Act, and the entire holding will pass in execution of the decree if brought to a sale.

*Forbes v. Maharaj Bahadur Singh* (1); *Krishnapada Chatterji v. Manadasundari Ghosh* (2); *Faridpur Loan Office, Limited v. Nirode Krishna Ray* (3); *Sashi Kanta Acharjee v. Lechoo Sheikh* (4) and *Ayasha Khatun v. Md. Hossain Molla* (5) referred to.

*Maharaj Bahadur Singh v. Nari Mollani* (6) explained and distinguished.

APPEAL FROM APPELLATE ORDER preferred by the decree-holders.

The landlords, plaintiffs, brought two suits for recovery of arrears of rent against the tenants and obtained decrees. They afterwards came to know

\*Appeals from Appellate Orders, Nos. 498 and 499 of 1936, against the orders of S. K. Haldar, District Judge of Midnapore, dated May 16, 1936, affirming the order of G. A. Chaudhuri, Munsif of Jhargram, dated Feb. 14, 1936.

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

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

(3) (1928) I. L. R. 56 Cal. 462.

(4) (1935) 61 C. L. J. 548.

(5) (1936) 41 C. W. N. 85.

(6) (1936) I. L. R. 63 Cal. 1117.

that portions of the holding had already been purchased before the decree at sales in execution of mortgage decrees by two parties who had not been impleaded in the rent suits. The plaintiffs, decree-holders, thereafter made the purchasers parties to the execution proceedings, who objected to the rent-decrees being executed against them.

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The Munsif gave effect to the objection and dismissed the execution-petition as against them, and the order was upheld, on appeal, by the District Judge.

The landlords decree-holders thereupon preferred these Miscellaneous Appeals to the High Court.

The points argued in the appeals and the cases cited are sufficiently stated in the judgment.

*Panchanan Ghosh and Durga Das Ray* for the appellants.

*Surajit Chandra Lahiri* for the respondents.

*Paritosh Sarkar* for *Satyendra Nath Mitra* for the Deputy Registrar.

*Cur. adv. vult.*

M. C. GHOSE J. These are two Second Appeals by the decree-holder in an execution case. The facts in short are that the decree-holder appellant brought a rent suit in 1934 against thirteen persons claiming arrears of rent for the years 1337-1340 B.S. The suit was decreed on July 20, 1934. In November 1935, he applied for execution of the decree. In the execution-petition, he impleaded the two principal respondents, who were not parties to the decree, but who, the decree-holder stated, had purchased portions of the holding in arrears. Thereupon the two principal respondents appeared and filed two separate petitions of objection under s. 47, Code of Civil

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Procedure, and contended that the decree could not be executed against them as they were not parties to the original suit. The objections were allowed by the trial Court. Appeals by the decree-holder to the District Judge were dismissed. Respondent Prabhash Chandra Mallik purchased a portion of the holding in execution of a mortgage-decree against respondent Poorna Chandra Patra on September 16, 1932, and obtained a sale-certificate on March 2, 1933. A notice of transfer was posted to the decree-holder in February, 1935, from the Collector's office. Respondent Durlabh Chandra Bej purchased a portion of the tenure in execution of a mortgage-decree against respondent Poorna Chandra Patra on May 25, 1934 and the sale was confirmed on July 6, 1934. It does not appear that the sale-certificate was obtained by him.

The finding of both Courts is that the landlord decree-holder did not know at the time of the suit or at the time of the decree that either of these two men had purchased a portion of the share of the respondent Poorna Chandra Patra. The question in the circumstances is whether, as the Court of appeal below has found, the decree has ceased to be a rent-decree and become a money-decree. Under s. 65 of the Bengal Tenancy Act, where the tenant is an occupancy *râmyat* he shall not be liable to ejection for arrears or rent, but his holding shall be liable to sale in execution of a decree for the rent thereof and the rent shall be a first charge thereon. It was held in many cases that where the landlords consist of more than one person then all the landlords must sue together to obtain the benefit of this section and where the tenants consist of more than one person then all the tenants must be impleaded to get the benefit of the section. Further that the relationship must be subsisting at the date of the decree and even at the date of the execution and subsequent sale. In the case of *Forbes v. Maharaj Bahadur Singh* (1) their

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Lordships of the Privy Council held that, after the landlord had sold his estate to another and then sued the tenant for arrears of rent for a period previous to the sale and sought to sell the tenure in arrears in execution, Chap. VIII, in which s. 65 lies, regulates the respective rights of landlords and tenants and action under s. 65 can, therefore, be taken only when the relationship of landlord and tenant is subsisting between the parties. Indeed, so strict is the rule as to the subsistence of relationship that, under s. 148 (8), the landlord after a rent-decree can bring the tenure or holding to sale, but, if he transfers the decree to another person, that person has no such right. The case of *Forbes v. Maharaj Bahadur Singh* referred to above was followed by the Special Bench of this Court in the case of *Krishnapada Chatterji v. Manadasundari Ghosh* (1). It has been held by the Special Bench that the landlord, who has parted with his interest, even though it be after the rent-decree, cannot lawfully bring the tenure or holding to sale in execution of the decree and that such action can only be taken when at the date of the sale the relationship of landlord and tenant subsists.

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It has been held in many cases that, for a decree for arrears of rent being a rent-decree, the landlord must sue all the tenants of the tenure, except in cases where all the tenants represented some of them as their representatives to the landlord. This view was strictly followed in the case of *Faridpur Loan Office, Limited v. Nirode Krishna Ray* (2). The plaintiff had bought a share of a tenure in execution of a decree but had not paid transfer-fee under s. 12 nor did he take possession of the lands or collect any rents from the tenants. The record-of-rights was prepared showing that the party against whom he obtained the decree was still in possession. Thereafter, the landlord sued the old tenants under s. 105 and got the enhancement. Then he sued the tenants and got a decree for arrears of rent and in execution

(1) (1932) I. L. R. 59 Cal. 1202.

(2) (1928) I. L. R. 56 Cal. 462.

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thereof purchased it himself. The plaintiff had paid no rent and when a period of twelve years was about to elapse he instituted the suit. It was dismissed by the trial Court and the first appellate Court. In Second Appeal to this Court, it was held upon the facts that it was not proved that the tenants had represented to the landlords that certain number of them represented the whole tenure. Further, that there was no finding that the plaintiff knew of the record-of-rights and of the s. 105 proceedings. There was no finding that the plaintiffs had represented the landlord and the others represented the tenure. Further, that mere non-payment of rent did not invalidate the tenants' right and the plaintiff's suit was decreed.

These cases, however, were all decided prior to 1929, when s. 146A of the Bengal Tenancy Act was enacted, and it is our duty to interpret s. 146A. It is a mere academic question whether by s. 146A any new law has been propounded or not. It is our duty clearly to interpret the section according to its ordinary meaning and wherever any previous decision happens to be at variance with the section that previous decision will stand as repealed by the legislature. This section in its first sub-section provides that when a person has bought a share of a tenure he is liable to pay the rent not only from the date of his purchase but he is liable to pay all the arrears of his predecessor-in-interest. Sub-section (2) practically lays down that the decree in a rent suit will be binding on all co-tenants under certain circumstances, although some of the co-tenants were not made parties to the suit. The actual words are:—

The decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in the Chap. XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the holding.

In sub-s. (3) the expression "the entire body of "co-sharer tenants" is defined. There are four clauses to sub-s. (3). In two cases, *viz.*, the cases

of *Sashi Kanta Acharjee v. Lechoo Sheikh* (1) and *Ayasha Khatun v. Md. Hossain Molla* (2), Mitter J. has held that the four clauses of sub-s. (3) of s. 146A should be read disjunctively so that the landlord must implead as defendant every co-sharer tenant who comes under the description of any of the four clauses. I entirely agree in that view. The question now is whether the two respondents come under any of the four clauses so that in their absence the decree would not be a rent decree. Now, as found by the Courts below these two men were recent purchasers. They having purchased an interest in the holding they would come under sub-cl. (3) after they have given notice of the purchase under s. 13 or 26F. Now, in this case, as the learned District Judge has found, there was no notice served on the landlord till after the decree was passed. The learned District Judge, however, has relied on the case of *Maharaj Bahadur Singh v. Nari Mollani* (3). He quoted a portion of the judgment and holds that the decree ceased to be a rent decree immediately on the purchase by the respondent, whether the landlord had any knowledge of the transfer or not. In this view, the learned District Judge is in error. The judgment of R. C. Mitter J. does not lead to that conclusion. What he says is that from the date of the purchase the purchaser obtains his right. That is not in question in this case. The question is whether under the provision of s. 146A the decree is a rent-decree. In the decided case, R. C. Mitter J. observed as follows:—

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On the facts of this case where the opposite party No. 2 was not added to the rent suit inspite of the landlord's knowledge of the transfer, the principles laid down in *Forbes' case* (4) and *Krishnapada Chatterjee's case* (5) prevent me from taking the view that the claim of opposite party No. 2 was inadmissible.

The reason for the decision in that case was that the landlord knew of the transfer. In fact, the

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(2) (1936) 41 C. W. N. 85.

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vendor tenant stated in Court in his written statement that he had sold his share to the other party, but the landlord neglected to implead him as a defendant. In this case, the facts are entirely different. There is nothing to show that the landlord at the date of the decree knew of the purchase by either of the respondents. Further, the landlord's good faith is shown in this case that, at the date of the execution, he, having come to know that these two men had purchased shares of the holding, impleaded them in his execution petition. The opposite party in objecting to be made party in the execution petition were misguided. As the decree has satisfied the condition laid down in s. 146A, the total holding will pass in execution of the decree if brought to a sale. In this position, the landlord by impleading the two respondents in the execution petition has given them an opportunity of preventing the property from being brought to sale for they are at liberty to pay the decretal amount and then they will be entitled to the benefits of s. 171.

The appeals are allowed with costs in all Courts. Hearing fee two gold mohurs in each case. The orders of the lower Courts are set aside and the execution do proceed.

*Appeals allowed.*

A. A.