

## CIVIL REVISION.

Before Nasim Ali and Rau J.J.

SUSHIL KUMAR GHATAK

v.

SATYA GOPAL CHATTERJI\*

1939

Aug. 18.

**Auction sale**—*Purchaser from judgment-debtor by private treaty after such sale, if a person "whose interests are affected by the sale"*—*Bengal Tenancy Act (VIII of 1885), s. 174 (1).*

A purchaser by a private treaty from a judgment-debtor after sale of an agricultural holding under Chap. XIV of the Bengal Tenancy Act and before its confirmation is a person whose interests are affected by the sale within the meaning of s. 174 (1) of the Act and is entitled to get the sale set aside under that section.

The sole criterion for determining whether a person's interest is affected by the sale is to find out whether his interest will be affected if the sale be ultimately confirmed.

CIVIL RULE obtained by the auction-purchaser under s. 115 of the Code of Civil Procedure.

The facts of the case are sufficiently stated in the judgment.

*Ashoke Nath Mukherjee* for the petitioner. A person who purchases the holding from the judgment-debtor by private treaty after the auction-sale is not one whose interest is affected by the sale within the meaning of s. 174(1) of the Bengal Tenancy Act. An interest contemplated in the section is an interest existing at the date of the sale.

*Purushottam Chatterji* for the opposite party. Unlike a sale under the Civil Procedure Code, a purchaser at a sale under the Bengal Tenancy Act gets his title from the date of confirmation of the sale and not earlier. The judgment-debtor therefore

\*Civil Revision, No. 408 of 1939, against the order of Jyoti Prasad Banerji, Subordinate Judge of Asansol, dated Dec. 12, 1938, reversing the order of Fazlul Karim, Second Munsif of Asansol, dated July 9, 1938.

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has some subsisting right in the holding up to the date of confirmation which he can pass on to the purchaser from him before the sale is confirmed. The purchaser therefore is a person whose interest is affected by the sale and is entitled to apply.

NASIM ALI J. The only point for determination in this Rule is whether a purchaser by a private treaty from a judgment-debtor, after sale of an agricultural holding under Chap. XIV of the Bengal Tenancy Act, is entitled to get the sale set aside under s. 174, cl. (1) of that Act. That clause is in these terms :—

Rules 89 and 90 of O. XXI in Sch. I to the Code of Civil Procedure, 1908, shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor, or any person whose interests are affected by the sale, may at any time within thirty days from the date of the sale apply to the Court to set aside the sale, on his depositing—

(a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs ; and

(b) for payment to the auction-purchaser, as penalty, a sum equal to five per cent. of the purchase money, but not less than one rupee.

The contention of the petitioner is that a person, who purchases the holding after the sale, is not a person whose interest is affected by the sale, as the interest contemplated in the section is an interest existing at the date of the sale. We are unable to accept this view of the matter. There is nothing in the section to indicate that the interest of the person, who makes the application for setting aside the sale, must be in existence at the date of the sale. If the interpretation sought to be put upon the word "interest" in this section by the petitioner be accepted, the position would be that, if the judgment-debtor dies a day after the sale, his heirs or legal representatives would have no right to get the sale set aside on deposit of the decretal amount. The sole criterion for determining whether a person's interest is affected by the sale is to find out whether his interest will be affected if the sale be ultimately confirmed. Under s. 159 of the

Bengal Tenancy Act, a purchaser at a rent-sale gets his title from the date of the confirmation of the sale and not from the date of the sale, as in a sale under the Code of Civil Procedure. The judgment-debtor, therefore, has a subsisting interest between the date of the sale and the date of the confirmation of the sale. The purchaser from the judgment-debtor after the date of the sale and before the confirmation of the sale, therefore, acquires the subsisting interest of the judgment-debtor. If the sale be not set aside, that is to say, if the sale be confirmed, the interest which the purchaser has got from the judgment-debtor would be affected by the sale in the same way as the interest of the heirs of the judgment-debtor if he dies after the sale would be affected. We are, therefore, of opinion that the learned Subordinate Judge was right in holding that the purchaser at a private sale after the auction sale has *locus standi* to get the sale set aside under s. 174. cl. (1) of the Bengal Tenancy Act.

The Rule is, accordingly, discharged with costs.  
Hearing fee one gold mohur.

RAU J. I agree.

*Rule discharged.*

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*Nasim Ali J.*