

APPELLATE CIVIL.

Before Mr. Justice Cunningham and Mr. Justice Maclean.

1883
March 9.

G. M. REILY (PLAINTIFF) v. HUR CHUNDER GHOSE AND OTHERS
(DEFENDANTS) *

Sale for arrears of rent—Landlord and Tenant—Sale of a portion of a Tenure—Beng. Act VIII of 1869, ss. 59, 60, 64.—Co-sharers—Parties.

A portion of a tenure cannot be the subject of a sale under s. 64, Beng. Act VIII of 1869 so as to give the purchaser the same privilege as he would acquire by the purchase of an entire tenure under ss. 59 and 60.

A landlord who was in receipt of a half share of the rent of a certain tenure caused that share of the tenure to be sold in execution of a decree for arrears of rent. After such sale *A*, the purchaser, took possession. Subsequently the tenant executed a mortgage, and a decree being obtained by the mortgagee the whole tenure was brought to sale in execution thereof and purchased by the mortgagee who proceeded to oust *A*.

In a suit by *A* to recover possession of his half share of the tenure on the footing of his purchase,

Held, that he could not make out a title to the half tenure with the privilege attaching to the purchase of an entire tenure under ss. 59 and 60 of Beng. Act VIII of 1869, and that as it appeared that the mortgagor, whose rights and interests only were thus sold, was only one of several co-sharers, in the absence of the co-sharers who were not parties to the suit, *A* was not entitled to the relief he sought.

THE plaintiff in this suit alleged that Lal Khatoun, defendant No. 4, held a jama of Rs. 60-11 under Purno Chunder Roy, defendant No. 3, and one Bepin Chunder Roy, and that the rent thereof was separately paid to the maliks in two equal shares of Rs. 30-5-6 each; that in 1875 the defendant No. 3, in execution of a rent decree against the defendant No. 4, brought his share of the jama to sale, and it was purchased by the plaintiff on the 15th January of that year; that similarly the remaining eight-anna share of the jama was brought to sale by Bepin Chunder Roy, and was purchased by one Gouri Prosad Kundu, and that after their purchase both the plaintiff and Gouri Prosad were in possession

* Appeal from Appellate Decree No. 2130 of 1881, against the decree of Baboo Upendra Chunder Mullick, Subordinate Judge of Jessore, dated the 5th August 1881, affirming the decree of Baboo Prosunno Coomar Ghose, Munsiff of Magura, dated the 28th February 1881.

of their purchased shares by separately collecting rents from the sub-tenants of that tenure; that subsequently Hur Chunder Ghose and Ramdyal Ghose, defendants Nos. 1 and 2, in collusion with the defendant No. 4, made a false mortgage-bond against the latter, and defendant No. 1 obtained a decree thereon, and in execution of that decree fraudulently purchased the jama of Rs. 60-11, and dispossessed the plaintiff of his share. The plaintiff accordingly brought this suit to recover possession of his share upon the basis of his auction-purchase, and on the allegation that the purchase by the defendant No. 1 was a fraudulent one, and as such conferred no right on him.

Defendants Nos. 1 and 2 alone entered appearance and pleaded that the plaintiff having purchased only a share of his undivided tenure of Rs. 60-11, his purchase was illegal and conferred no right on him; that his allegation as to the possession and dispossession were totally false; and that the mortgage-decree and the auction-purchase of the defendant No. 1 were real and *bona fide* transactions; that defendant No. 1 alone was in possession of the tenure; and that as purchaser the plaintiff had no preferential right as against him.

The Court of first instance found that the tenure of Rs. 60-11 was an undivided joint estate, and that it was never sub-divided into two jamas as alleged by the plaintiff, though the rent of it was paid separately to the maliks, and that there were several co-sharers in it besides Lal Khatoun. It therefore held that the plaintiff by his purchase of the jama of Rs. 30-5-6 purchased the rights of Lal Khatoun in the moiety of an undivided tenure, and that his purchase was illegal and created no rights in him. That Court also found that after the tenure was purchased by the plaintiff and Gouri Prosad, Ramdyal got up a false mortgage deed in collusion with the Khatouns, and subsequently got possession of the property under that deed by virtue of his purchase. The suit was accordingly dismissed. The lower Appellate Court confirmed that decree, agreeing with the finding of the lower Court that the plaintiff got nothing by his purchase; but it declined to express any opinion as to whether the mortgage transaction was a *bona fide* one or not.

The plaintiff preferred a special appeal to the High Court.

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Baboo *Kashi Kant Sen* appeared on behalf of the appellant.

Baboo *Bungsidhur Sen* and Baboo *Rash Behary Ghose* for the respondents.

The judgment of the Court (CUNNINGHAM and MACLEAN, JJ.) was delivered by

CUNNINGHAM, J.—The main question in this case is, whether a portion of a tenure can be sold for arrears of rent under Beng. Act VIII of 1869.

Appellant's case is, that defendant No. 3, who was the landlord of defendant No. 4, and in receipt of a half share of the rent of a tenure rated at Rs. 60-11, caused his share in the tenure to be sold in execution of a decree for arrears of rent. Appellant became the purchaser, and he now claims possession on the ground that he purchased the property free of encumbrances, and that defendant No. 1 has fraudulently and collusively set up a false mortgage by defendant No. 4 and his co-sharers, and in execution of a decree obtained on the mortgage has bought the whole tenure, and ousted appellant from one-half.

Reference to the sale certificate shows that the sale, at which appellant purchased on 15th January 1875, was held under the provisions of Beng. Act VIII of 1869, and that a jama of Rs. 30-5-6 out of Rs. 60-11 was sold.

Both the lower Courts have held that appellant acquired nothing by the purchase, regard being had to s. 64 of the Act referred to. The first Court found that the title of defendant No. 1 was bad, as the mortgage he set up was a fraudulent one.

The lower Court expressed no opinion upon this question.

We think that the decision of the Courts below is correct, so far as it decides that a portion of a tenure cannot be the subject of a sale under s. 64, Beng. Act VIII of 1869, and that appellant cannot make out a title to the half tenure with the privileges attaching to the purchase of an entire tenure under s. 59. It has been established by a number of decisions in this Court that a purchaser under s. 108, Act X of 1859, which corresponds to s. 64, Beng. Act VIII of 1869, acquires the judgment-debtor's rights and interests only.

It appears, however, that the defendant No. 4, whose rights and interests were thus sold, was only one of several co-sharers, and we cannot decide in this case, and in the absence of his co-sharers, what that share was. There are, therefore, no sufficient grounds for saying that appellant has even purchased rights in the tenure to the extent of one-half, and it is therefore unnecessary to remand the case for a decision as to the validity of the first defendant's alleged mortgage and decree as against appellant.

We therefore dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Mitter, Offg. Chief Justice, and Mr. Justice Norris.

JULLESSUR KOOER (DEFENDANT) v. UGGUR ROY AND OTHERS
(PLAINTIFFS.)*

1882
December 18.

*Hindu Law—Inheritance—Mitakshara—Sister—Male Gotraja Sapindas—
Stridhan.*

According to the Mitakshara law a sister is not in the line of heirs, and is not entitled to succeed in preference to male gotraja sapindas. Nor does an estate inherited by a female become her stridhan. Such estate on her death goes to the heirs of the last male heir, and not to the heir of her separate property.

Baboo *Mohesh Chunder Chowdhry* and Baboo *Goorn Dass Banerjee* for the appellant.

Baboo *Kali Kissen Sen* and Baboo *Golap Chunder Sircar* for the respondents.

THE facts of this case sufficiently appear from the judgment of the Court (MITTER and NORRIS, JJ.) which was delivered by

MITTER, J.—This suit relates to the estate left by one Sheo Prosad Roy, who died in Assar 1270 (June 1863). It is admitted by the contending parties that on Sheo Prosad's death his estate devolved upon his widow, Sunder Kali Kooer, under the Mitakshara law of inheritance which governs the family. Sunder Kali

* Appeal from Original Decree No. 33 of 1881, against the decree of Baboo Kali Prosono Mukerjee, Subordinate Judge of Sarun, dated the 6th November 1880.