

necessary ; and that they stationed these *laltials* to keep off the opposite party and these were brandishing their weapons, while the land was sowed. That falls within the definition of the offence, because there was an assembly for the purpose of enforcing a right by criminal force, or shew of criminal force.

It was contended that this case was governed by the case of *Shunker Singh v. Burmah Mahto* (1) ; but as was pointed out by the Judge in the appeal Court in this case, that case is distinguishable. It was decided on this ground that what was done there was an act justified by the sections relating to private defence, and it was expressly pointed out that it did not fall under cl. 3 of s. 99 of the Penal Code. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. In this case it appears that there was plenty of time to have recourse to the public authorities, therefore the law as to private defence does not apply.

The rule will be discharged.

Rule discharged.

APPELLATE CIVIL.

Before Mr. Justice Maclean and Mr. Justice O'Kinealy.

DWARKA NATH AND OTHERS (PLAINTIFFS) v. ALOKE CHUNDER
SEAL AND OTHERS (DEFENDANTS).*

1888
January 9.

Sale for arrears of rent—Beng. Act VIII of 1869, ss. 59, 60—Sale Certificate—Proclamation of Sale—Under Tenure.

Held, on the construction of a sale certificate and a proclamation of sale purporting to be made under ss. 59 and 60 of the Rent Act, Beng. Act VIII of 1869, that what passed by the sale was not an under tenure, but merely the right, title and interest of the judgment-debtor therein.

The declaratory portion of a sale proclamation is not by itself sufficient to override the description of the property in the body of the document.

THIS was a suit for possession of a *howla* which the plaintiffs claimed to have purchased in 1871 at a sale held under the provi-

*Appeal from Appellate Decree No. 873 of 1881, against the decree of Baboo Bane Madhub Mitter, Subordinate Judge of Backergunge, dated the 23rd September 1880, modifying the decree of Baboo Doorga Churn Sen, Sudder Munsiff of Burrisal, dated the 30th September 1879.

1883

DWARKA
NATH
v.
ALOKI
CHUNDER
SEAL.

sions of ss. 59 and 60 Beng. Act VIII of 1869, in execution of a rent-decree. The defence was, amongst other things, that the tenure did not pass by the sale, but only the right, title and interest of the judgment-debtors. On this point the Judge of the Court of first instance said: "It is manifest, as appears from the sale certificate, that the property was sold under ss. 59 and 60 of the Rent Act, and as such, the plaintiffs would be entitled to obtain the property free from incumbrances of the defaulting tenant." On appeal the Subordinate Judge said: "I find that the sale certificate, which was filed by the plaintiffs, and the certified copy of the sale proclamation, which has been now filed by the respondents, show that the right, title and interest of the judgment-debtors were sold, although in the heading of the sale proclamation it was mentioned that the tenure would be sold, but it is clearly mentioned below that 'দাহানের ভোগ দখলি স্বত্ব' that is the rights which are in possession and enjoyment of the judgment-debtors would be sold. Such being the case the purchaser in such a sale did not purchase the the tenure free from incumbrances—*Dular Chand Sahu v. Lal Chabil Chand* (1)." The Subordinate Judge then reversed the decision of the Munsiff, and the plaintiff appealed to the High Court.

Baboo Bhoobun Mohan Dass for the appellants.

Baboo Rash Behari Ghose for the respondents.

The judgment of the Court (MACLEAN and O'KINEALY, JJ.) was delivered by

MACLEAN, J.—In this case the question to be decided is whether the sale, on the basis of which the plaintiffs sue as purchasers, passed the tenure or only the right, title and interest of the judgment-debtors. It appears that in 1870, the plaintiffs' mother brought a suit for arrears of rent of a *howla* for the years 1274, 1275 and 1276, and obtained a decree on the 19th July. In execution of that decree, the property, on account of which the suit for arrears had been brought, was sold. What was sold is the present dispute. It is contended on behalf of the plaintiffs that since the certificate purports to have been issued under ss. 59 and 60 of the Rent Act, and the Court admittedly had no power to

(1) 3 C. L. R. 561.

sell under that Act anything but the tenure itself, there arises an irrebuttable presumption in favour of the tenure being sold. But when we turn to the notification, under which the sale is declared to have taken place, and the sale certificate, we find that they contain a clear and precise statement showing that what was proclaimed for sale and what was actually sold was not the tenure, but the right, title and interest of the defendants. This too appears to be consonant with the fact that the decree-holders purchased the property for a very small sum. Following the decision of a Division Bench of this Court, in special appeal No. 2752 of 1875, we are of opinion that the declaratory portion of a proclamation is not by itself sufficient to override the description of the property in the body of the document, and that it is not the tenure, but the right, title and interest of the judgment-debtor that was sold in the former suit and purchased. In this view of the case, we uphold the decision of the Subordinate Judge and dismiss the appeal with costs.

1883

DWARKA
NATH
v.
ALOK
GHUNDER
SEAL.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Wilson.

SRIPOTI CHURN DEY (PLAINTIFF) v. MOHIP NARAIN SINGH
(DEFENDANT).*

1883

February 26.

*Mortgage—Right to redeem—Mokuravidar—Regulation XVII of 1806, s. 8
—Notice of foreclosure.*

The holder of a monrasi mokurari patta under the mortgagor is not a "representative" within the meaning of s 8 of Regulation XVII of 1806, and is therefore not entitled to notice of foreclosure under that section.

Lalla Doorga Pershad v. Lalla Luchmun Sahoy (1) followed.

Baboo Sree Nath Das and Baboo Juggut Chunder Banerjee for the appellants.

Baboo Ras Behary Ghose for the respondent.

THE material facts of this case are sufficiently stated in the judgment of the Court (PRINSEP and WILSON, JJ.) which was delivered by

PRINSEP, J.—The facts of this case are as follows: In Assin

* Appeal from Appellate Decree No. 1572 of 1881, against the decree of Baboo Kedar Nath Muzumdar, Second Subordinate Judge of Midnapore, dated the 16th June 1881, reversing the decree of Baboo Dabendro Lal Shome, First Munsiff of that district, dated the 8th March 1880.

(1) 17 W. R., 272.