

Before Mr. Justice Prinsep and Mr. Justice Beverley.

RAHIM BUX (AUCTION-PURCHASER) *v.* NUNDO LAL GOSSAMI AND ANOTHER (DECREE-HOLDERS) AND SITAL CHUNDER MUKERJI AND OTHERS (JUDGMENT-DEBTORS).^a

1887
February 2.

Bengal Tenancy Act (VIII of 1885), s. 174—Deposit, Nature of—Jurisdiction—Application under s. 622 of the Civil Procedure Code.

The deposit under s. 174 of the Tenancy Act must be of such a nature as to be at once payable to the parties, and a Court has no power to set aside a sale under that section unless the judgment-debtor has complied strictly with its provisions.

SITAL CHUNDER MUKERJI, on behalf of himself and a minor along with other co-tenants, made an application to the Subordinate Judge under s. 174 of the Bengal Tenancy Act to set aside a sale of their joint tenure, and under the special circumstances of the case, the Court accepted the deposit, although it was not made strictly within time. The deposit, however, was partly in cash and partly in a Government Promissory Note, by way of security for a balance of less than Rs. 600. The Court, notwithstanding the objection of the auction-purchaser, accepted the amount with the consent of the decree-holder, and upon the view that one of the parties was a minor, that the decree-holder was satisfied, and that the section ought to be leniently construed in favour of the judgment-debtors, held that there was a sufficient compliance with the terms of the section, and set aside the sale, allowing the auction-purchaser 5 per cent. on his purchase money according to law.

On the motion of the auction-purchaser the High Court issued a rule under s. 622 of the Civil Procedure Code.

Baboo *Gurudas Banerjee* (with him Baboo *Omakali Mukerji*) for the opposite party, showed cause.—In this case there has been a sufficient compliance with the law. There was a sufficient deposit within the meaning of the section. The decree-holder being a consenting party, the money must be taken to have been deposited. The language of the Act is not “amount recovered under the decree” but “money recoverable under the decree.” There is no ground of relief under s. 622 of the Civil Procedure

^a Civil Rule No. 1506 of 1886 against the order passed by Baboo A. C. Mitter, Subordinate Judge of Hooghly, dated the 13th November, 1886.

1887
 RAHIM BUX
 v.
 NUNDO LAL
 GOSSAMI.

Code. The Subordinate Judge, in the exercise of his jurisdiction, has done substantial justice. Moreover, interference under s. 622 is discretionary with this Court. There is no question of jurisdiction here. *Raja Amir Hassan Khan v. Sheo Baksh Singh* (1).

Baboo *Troyluko Nath Mitter* for the petitioner in support of the rule.—There was no legal deposit in this case. A Government Promissory Note is not a legal tender. The words of the section confer on the judgment-debtor a substantial right to the detriment of the purchaser; the section should not therefore be leniently construed in favour of the judgment-debtor. The consent of the decree-holder is immaterial. There being no legal tender in this case, and consequently no deposit, the Subordinate Judge had no jurisdiction to set aside the sale.

The Court (PRINSEP and BEVERLEY, JJ.) delivered the following judgment:—

This is a matter under s. 174 of the Bengal Tenancy Act, in which the Subordinate Judge has set aside the sale on receiving from the debtor what, in his opinion, represented the money due to the decree-holder, and the percentage allowed to the auction-purchaser. Three objections are raised before us: first, that the case does not come within the Bengal Tenancy Act; secondly, that the deposit was not made in time; and, thirdly, that from the nature of the deposit made, it was not a proper deposit such as would entitle the judgment-debtor to relief. It is unnecessary in the view that we take of the merits of the case to consider the first point. The facts found by the Subordinate Judge seem sufficiently to show that the deposit, if it were a proper deposit, was made in proper time. We are, however, of opinion that the third objection is fatal. The judgment-debtor deposited a sum of money in cash and also a Government Promissory Note for Rs. 1,000, which, if negotiated, would probably be more than sufficient to cover the balance due. The auction-purchaser and the decree-holder both objected to this kind of deposit, and represented that there was no power to negotiate this Government Promissory Note. Two days later,

(1) L. R., 11 Ind. Ap., 237; I. L. R., 11 Calc., 6.

the debtor came to terms with the decree-holder, and on certain conditions connected with the probable difficulty to negotiate this Promissory Note, the decree-holder agreed to accept this Government Promissory Note, and the balance in cash paid in satisfaction of the amount due to him. The auction-purchaser, however, still objected, although the payment to him was apparently to be made in cash. We think that to claim the benefit of s. 174 the judgment-debtor is bound strictly to comply with its provisions, and that the deposit made should be of such a nature as to be at once payable to the parties. In the present case it is quite possible that no objections may have arisen, but if a deposit otherwise than in the currency of the country were receivable, the finality which the law contemplates in such a transaction would be completely lost, and the time of the Court would be unnecessarily occupied in determining various points which the Legislature never contemplated in such a matter. Under such circumstances we think that the order of the Subordinate Judge must be set aside and the sale confirmed. The petitioner will be entitled to his costs, which we assess at Rs. 50.

K. M. C.

Rule absolute.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

DROBOMOYI GUPTA AND OTHERS (DEFENDANTS) v. C. T. DAVIS
AND OTHERS (PLAINTIFFS.)*

1887

January 24.

Receiver, Power of—Suit to eject tenant claiming permanent tenure without leave of Court—Notice to quit—Limitation—Adverse possession—Tenant claiming to hold permanent tenure as against landlord—Landlord and tenant—Jungleburi tenure—Hindu widow, Power of, to grant jungleburi tenure in respect of chur land.

D was appointed receiver in a partition suit pending in the High Court by an order which, amongst other things, gave him power to let and set the immovable property, or any part thereof as he should think fit, and to take and use all such lawful and equitable means and remedies for recovering, realizing and obtaining payment of the rents, issues and profits of the said immovable property, and of the outstanding debts and claims by action, suit, or otherwise as should be expedient. *D*, without special leave of the Court, served a notice to quit on certain tenants of the estate, who claimed to hold a permanent lease, and afterwards instituted a suit to eject them, also without special leave of the Court.

* Appeal from Original Decree No. 492 of 1885, against the decree of H. Beveridge, Esq., Judge of Furreedpore, dated the 6th of July, 1885.