

APPELLATE CIVIL.

Before *Jwala Prasad and Ross, J.J.*

1923.

RANGLAL SAHU

v.

June, 25.

KALI SHANKER SAHAI.*

Tenure—sale under mortgage decree—payments by purchaser to prevent sale in execution of rent decrees—suit for recovery of amounts paid, maintainability of—Contract Act, 1872 (Act IX of 1872), sections 69 and 70.

The purchaser of a tenure in execution of a mortgage decree is not entitled to recover from the tenant judgment-debtor sums which he (the purchaser) has subsequently paid to prevent the tenure being sold by the landlord in execution of decrees obtained by the latter in respect of rent which accrued due before the sale under the mortgage decree.

Srimoti Moharane Dasya v. Harendra Lal Ray Chowdhuri(1), *Maharaja Manindra Chandra Nundi v. Jamahar Kumari Bibi*(2), *Peary Mohan Mukhopadhyay v. Sreeram Chandra Bose*(3) and *Srimoti Giribala Debya v. Srimoti Rancee Mina Kumari*(4), approved.

Suchand Ghoshal v. Balaram Mardana(5), *Prosonno Kumar Bose v. Jamaidin Muhammad*(6) *Serajat Ali v. Isan Ali*(7), and *Sakal Singh v. Chanderdip Lal*(8), distinguished.

Held, on a contention that the case was governed by sections 69 or 70 of the Contract Act, 1872, that inasmuch as before the payment by the plaintiff had been made the defendant had lost the tenure by reason of the plaintiff's purchase, the preservation of the tenure by the payment of the rent

* Appeal from Appellate Decree No. 1067 of 1921, from a decision of H. Foster, Esq., i.c.s., Judicial Commissioner of Chota Nagpur, dated the 11th January, 1921, reversing a decision of Babu Suresh Chandra Sen, Subordinate Judge of Ranchi, dated the 10th November, 1919.

(1) (1896-97) 1 Ca. W. N. 458. (2) (1904-05) 9 Cal. W. N. 670.
 (3) (1901-02) 6 Cal. W. N. 794. (4) (1900-01) 5 Cal. W. N. 497.
 (5) (1911) I. L. R. 38 Cal. 1. (6) (1913-14) 18 Cal. W. N. 327.
 (7) (1918) I. L. R. 45 Cal. 691. (8) (1919) 49 Ind. Cas. 627.

decree did not benefit the defendant but the plaintiff, and, therefore, sections 69 and 70 did not apply to the case.

Dakhina Mohan Ray v. Sarada Mohan Ray(1), distinguished.

Mhaatha Harshankar Sahai v. Bandhu Sahu (2), referred to.

Appeal by the plaintiff.

This appeal arose out of a suit to recover Rs. 1,546-14-5 with interest at 24 *per cent. per annum*, aggregating to Rs. 2,210-6-5.

The Subordinate Judge decreed the suit. On appeal the learned Judicial Commissioner set aside the decision of the Subordinate Judge and dismissed the plaintiff's suit.

The facts were admitted. Plaintiff, Ranglal Sahu, purchased the tenure which belonged to the defendant, Kali Shanker Sahai, in execution of a mortgage decree on the 7th March, 1916. Prior to this plaintiff's superior landlord, the Maharaja of Chota Nagpur, had obtained a decree for rent and cess against the original tenure-holder, Kali Shanker Sahai, for the years 1909-1912 (corresponding roughly to 1909-1912). That decree was dated the 19th September, 1913. In execution of that decree the tenure was advertised for sale and the plaintiff, Ranglal Sahu, paid the dues under that decree Rs. 824 odd on the 17th March, 1916, and thus saved the tenure from being sold in execution of the decree. The landlord had obtained another decree for arrears of rent for the years 1914 to part of 1916, that is, prior to the purchase of the plaintiff, against the original tenure-holder. The decree was put into execution and the tenure was attached. On the 8th September, 1917, plaintiff Ranglal, however, filed a petition on the strength of his purchase under the mortgage decree and got his tenure released from attachment. At that time Ranglal's name was mutated in place of the

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(1) (1885) I. L. R. 21 Cal. 142; L. R. 20 I. A. 160.

(2) (1914) 22 Ind. Cas. 720.

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original tenant in the landlord's book. The landlord then sued Ranglal for arrears of rent for the same period, that is, 1914-1916, excepting the first year which was barred by limitation, and obtained a decree on contest on the 15th July, 1918. In execution of this decree the tenure was advertised for sale, and Ranglal prevented the sale of the property by putting into Court the sum of Rs. 722-5-0, the amount due under the decree. On the 4th March, 1919, plaintiff commenced this action out of which this appeal arose for recovery of the aforesaid two sums of Rs. 824 odd and Rs. 722-5-9 which he had paid in order to protect the property from sale. The said sums represented the arrears of rent due from the tenure when the original tenant, Kali Shanker Sahai, was in possession of it, that is, prior to the purchase of the tenure by plaintiff under the mortgage decree.

P. K. Sen (with him *Sailem Nath Palit*), for the appellant.

Guru Saran Prasad, for the respondent.

JWALA PRASAD, J. (after stating the facts, as set out above, proceeded as follows):—

The sole question for determination in this appeal is whether plaintiff can get himself reimbursed of the aforesaid sums from the original tenant, Kali Shanker Sahai, the defendant in the present case.

Learned Counsel, on behalf of the appellant, has invoked the aid of sections 69 and 70 of the Indian Contract Act in support of his contention that the plaintiff is entitled to recoup the said sums from the defendant. The Court below has overruled this contention and has held that the provisions of the aforesaid sections do not apply to the present case. In this view the learned Judicial Commissioner is supported by the decisions in the cases of *Srimoti Moharanees Dasya v. Harendra Lal Ray Chaudhuri* (1), *Maharaja Manindra Chandra Nundi v. Jamahar*

(1) (1896-97) 1 Cal. W. N. 453.

Kumari Bibi (1) and *Peary Mohan Mukhopadhyay v. Sreeram Chandra Bose* (2). It is not disputed by Mr. Sen that the aforesaid authorities apply to the present case. The first two cases are on all fours with the present one. In the case of *Srimoti Moharanee Dasya v. Harendra Lal Ray Chaudhuri* (3), as in the present case, the plaintiff had purchased the tenure in execution of his mortgage decree and then paid the money due under the decree obtained by the landlord against the tenure-holder for arrears of rent for a period anterior to the confirmation of sale. It was held that the plaintiff was not entitled to recover the money paid by him for satisfying the rent decree. Similarly in the case of *Peary Mohan Mukhopadhyay v. Sreeram Chandra Bose* (2), the plaintiff purchased a *patni taluk* in execution of a rent decree and subsequently paid the decree for rent obtained by the landlord for a period anterior to that of the rent decree in execution of which plaintiff had purchased the property. It was held in that case that the purchaser was not entitled to contribution from the original tenant against whom the rent decree was obtained. These cases lay down that the purchaser of a tenure purchases the property with the incumbrance of rent due from the original tenant with respect to the tenure in question at the date of his purchase, the rent being the first charge. He must be deemed to have knowledge of the prior incumbrances and the existence of an incumbrance must have affected the price which he offered at the auction sale. The case of *Srimoti Giribala Debya v. Srimoti Ranee Mina Kumari* (4) goes to the length of saying that the arrears of rent due in respect of the property, sought to be sold, is a material fact which must be notified at the time of the sale of the property. The purchaser, therefore, purchases the property with the liability of the prior rent charges. In short, the trend of the views

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(1) (1904-05) 9 Cal. W. N. 670.

(3) (1896-97) 1 Cal. W. N. 453.

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expressed in the cases referred to above seems to be that the liability to pay the prior rents due for a period prior to the purchase (as in the case of the plaintiff in the present case) is that of the purchaser, and in discharging the rent charges or in paying the rent decrees, he simply discharges his own liability and not that of the original tenant. Therefore the purchaser is not entitled to recover the prior rent charges paid by him from the original tenant.

Mr. Sen virtually says that the aforesaid authorities were wrongly decided, and, in support of his contention, he refers to *Dakhina Mohan Ray v. Sarada Mohan Ray* (1), *Mahatha Harshankar Sahai v. Bandhu Sahu* (2), *Suchand Ghoshal v. Beharam Mardana* (3), *Prosonna Kumar Bose v. Jamaluddin Mahomed* (4) and *Serafat Ali v. Issun Ali* (5).

In *Dakhina Mohan Ray v. Sarada Mohan Ray* (1) the plaintiff obtained possession, under the decree of the High Court, of a rent-paying estate and he paid the rents and cesses, in default of which payment the estate would have been sold. The High Court decree was afterwards reversed by the Privy Council. In 1885 the defendant obtained possession of the estate in execution of the High Court decree, and the plaintiff claimed the revenue and cesses paid by him while he was in possession of the property. Lord Macnaghten, in delivering the judgment of the Judicial Committee, observed: ".....it seems to their Lordships to be common justice that when a proprietor in good faith pending litigation makes the necessary payments for the preservation of the estate in dispute, and the estate is afterwards adjudged to his opponent, he should be recouped what he has so paid by the person who ultimately benefits by the payment, if he has failed through no fault of his own to reimburse himself out

(1) (1894) I. L. R. 21 Cal. 142; L. R. 20 I. A. 160.

(2) (1914) 22 Ind. Cas. 720.

(3) (1911) I. L. R. 38 Cal. 1

(4) (1913-14) 18 Cal. W. N. 327.

(5) (1918) I. L. R. 45 Cal. 691.

of the rents." There can be no doubt that the plaintiff in that case had paid the revenue and cess believing the property to be his own and with a view to protect it from being sold for arrears of Government revenue. The payment was to save the estate from sale, and the defendant, having ultimately been adjudged to be the rightful owner of the estate was, therefore, benefited by the same. The plaintiff was interested in the payment because at the time when he made the payment he believed to be—and in fact he was under the decree of the High Court—the rightful owner of the property. The tenure, in the present case, has been lost for good to the defendant and the preservation of the tenure by payments of the rent decrees in question benefited not the defendant but the plaintiff who had, prior to the payments, acquired title to the property. Therefore the important element which is essential for the application of the principles of sections 69 and 70 of the Indian Contract Act and on the basis of which the plaintiff, in the aforesaid Privy Council case, was declared entitled to recover from the defendant the sums paid by him, is wanting in the present case. The case of *Suchand Ghoshal v. Balaram Mardana* (1) was really a case of a co-sharer having discharged the liabilities on the property, and he was therefore, held entitled to recover the sums paid by him which benefited his co-sharers. In that case the entire tenure was sold in execution of rent decrees obtained against only some of the co-sharer defendants. The plaintiff co-sharer who was not made a party in the rent suit deposited, under section 310 of the Code of Civil Procedure with the approval of the Court, the entire sums due under the decrees and thus had the sale set aside. This was a case of contribution. The case of *Prosonna Kumar Bose v. Jamaluddin Mahomed* (2) is again one of a co-sharer; so also are *Serafat Ali v. Issan Ali* (3) and *Sakal Singh v. Chanderdip Lal* (4) cases of contribution

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(1) (1911) I. L. R. 38 Cal. 1.

(2) (1913-14) 18 Cal. W. N. 327.

(3) (1918) I. L. R. 45 Cal. 69.

(4) (1919) 49 Ind. Cas. 627.

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among co-sharers. In a case of contribution the principles of the very sections of the Indian Contract Act, namely, sections 43, 68, 69, 70 and 72 would apply. The present case is not one of a co-sharer nor is it a suit for contribution.

The case of *Mahatha Harshankar Sahay v. Bunde Sahu* (1) relied upon by the learned Counsel does not seem to support him so far as section 69 is concerned, for it was held that the claim of the purchaser to recover from the outgoing tenant the amounts under the prior rent decrees could not be supported by section 69 of the Act. Their Lordships, however, allowed the claim under section 70 of the Indian Contract Act. No reason has been given for this view, nor the cases referred to in the earlier part of this judgment, in which a contrary view was taken seem to have been noticed in the case. Whereas the facts of the cases relied upon by Mr. Sen are not similar to those of the present case, the facts of the cases upon which the learned Judge has relied are on all fours with the present one. Therefore if this case was to be decided upon the authority of decided cases, there is no doubt that the contention of Mr. Sen must fail. It appears to me, however, that upon a true construction of sections 69 and 70, there is hardly any room for doubt that they do not afford any assistance to Mr. Sen in his contention that the present case is governed by the provisions therein contained. True, a decree for rent binds not only the tenure but also the holder thereof for the payment of the same, and the decree-holder may, at his option, proceed against the person and other properties of the judgment-debtor instead of against the tenure concerned. If in the present case the landlord had proceeded against the person and other properties of the tenant-defendant then no question would have arisen that the plaintiff who had purchased the tenure was not in any way interested in the payment of the said decrees. That

(1) (1914) 22 Ind. Cas. 720.

event, however, did not occur. The landlord proceeded against the tenure itself. Having elected thus to proceed against the tenure he precluded himself from in any way proceeding against the person and other properties of the judgment-debtor so long as the tenure was not sold and the amount fetched at the sale was not sufficient to pay off the decrees in question. The latter event also did not happen because the plaintiff paid off the decrees before the properties were sold. But for aught we know from the result of the sale in the mortgage decree in which the plaintiff purchased the property, it was a very valuable property worth about Rs. 35,000, and the rent decrees in question would have very easily been paid off out of the sale-proceeds without driving the landlord to the necessity of proceeding against the person and other properties of the judgment-debtor for the balance of any decretal amount left unrealized by the sale-proceeds of the tenure in question. The landlord in the present case proceeded against the tenure and advertised the same for sale and thus all danger to the person and other properties of the judgment-debtor ceased. Therefore he was not interested in the payment of the rent decrees in order to protect his person and other properties. In the tenure itself certainly he was not interested, his entire interest having ceased by the purchase thereof by the plaintiff. Therefore the defendant was not interested in the payment of the rent decrees, and the plaintiff paid the same simply to protect his own property which he had already purchased. As has already been shown the plaintiff was bound in law to pay the prior rent decrees and charges with the incumbrances of which he purchased the property in question. Therefore the important element of section 69, namely, that defendant should have been bound by law to pay the sums of the decrees which the plaintiff paid is wanting in the present case. Now as to the benefit—by the payment in question the tenure was saved; defendant was not interested in the tenure; therefore, no benefit accrued to him, and unless any

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benefit accrued to the defendant by the payment made by the plaintiff the defendant was not liable under section 70 of the Indian Contract Act. Consequently section 70 has no application.

I therefore agree with the views expressed in the decisions relied upon by the learned Judicial Commissioner and dismiss the appeal with costs.

Ross, J.—I agree.

Appeal dismissed.

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Before Jwala Prasad and Ross, J.J.

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Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), sections 72 and 46(3)—Transfer of holding—subsequent surrender, validity and effect of.

A *raiyat* is entitled to surrender his holding under section 72 of the Chota Nagpur Tenancy Act, 1908, even though he has mortgaged it to a stranger, and the consent of the mortgagee is not necessary.

Saiyid Mohsinuddin v. Baikunthanath Sutradhar(1) referred to.

In such a case the mortgage is not binding on the landlord even though it was executed for consideration.

Semble, that in places where the Chota Nagpur Tenancy Act, 1908, is in force a *raiyat* is entitled to surrender his holding even in a case where he has already executed a sale of it to a stranger.

* Appeal from Appellate Decree No. 127 of 1912, from a decision of Baba Amrita Nath Mitra, Subordinate Judge of Ranchi, dated the 18th April, 1921, reversing a decision of Lala Tarak Nath, Munsif of Ranchi, dated the 27th June, 1919.

(1) (1921) I. L. R. 48 Cal. 605, F.B.