

## LETTERS PATENT.

Before Dawson Miller, C. J., and Kulwant Sahay, J.

SRIKANTA MANJHI

1927.

April, 26.

v.

BALAK SINGH BHUMIJ.\*

*Chota Nagpur Encumbered Estates Act, 1876 (Act VI of 1876), section 3—usufructuary mortgage of part of estate—suit by mortgagee against tenants for rent—decree obtained—Estate taken under charge—whether proceedings in execution of the rent decree are barred.*

Where a usufructuary mortgagee of part of an estate has obtained a decree for rent against the tenants of the mortgaged land and subsequently the estate is taken charge of under the Chota Nagpur Encumbered Estates Act, 1876, execution of the rent decree obtained by the mortgagee is not barred by section 3 of the Act.

The obligation of the tenants of mortgaged land to pay rent to a usufructuary mortgagee of the land is not a debt or liability of the estate, the recovery of which is barred under section 3.

Appeal under the Letters Patent by the defendant.

In this case the zamindar of Barahabhum granted a usufructuary mortgage of mauza Rangadih within his zamindari to the zamindar of Dumra. The Midnapur Zamindari Company were the assignees of the interest of the mortgagee, the zamindar of Dumra. In 1913 the Midnapur Zamindari Company brought a suit for rent against certain tenants of Rangadih, the Company being then in possession as assignees of the mortgaged interest. In that suit they succeeded and obtained a decree on the

\* Letters Patent Appeal no. 52 of 1926 against a decision of Ross, J., dated the 25th May, 1926, overruling a decision of Maulavi Najabat Husain, Subordinate Judge of Purulia, dated the 22nd March, 1923, which reversed a decision of Babu Sachindra Nath Ganguli, Munsif of Purulia, dated the 10th March, 1920.

20th September, 1913. The defendants in that suit were represented by the plaintiffs in the present suit. In 1914 the Barahabhum estate was placed under a manager under the provisions of the Chota Nagpur Encumbered Estates Act, 1876, and in the following year the manager sued the plaintiffs for rent including the rent which was the subject of the suit brought by the Midnapur Zamindari Company in 1913. In that suit he also obtained a decree and the decretal amount was deposited by the plaintiffs and the decree satisfied. In 1916 the Midnapur Zamindari Company took out execution of their decree against the plaintiffs and the property was put up for sale and sold to the defendant no. 1 in the present suit, he being no party to the suit. In June 1917 the defendant no. 1 got delivery of possession of the property. In December 1917 proceedings were taken by the tenants to set aside the rent decree of 1913 and those proceedings were successful. The exact ground upon which the rent decree was set aside appeared to be somewhat doubtful. Apparently it was on the ground that there had been no proper service of notice of summons, and the suit was restored for re-hearing. In the result on re-hearing the suit was dismissed on the ground that at that time, namely, in 1917, there was no relationship of landlord and tenant existing between the Midnapur Zamindari Company and the plaintiffs, the reason for that being that the estate had been placed under the manager appointed under the Encumbered Estates Act in the year 1914. Although the decree of 1913 was set aside still the holding had been sold under that decree and purchased by the defendant no. 1 and when the tenants endeavoured to recover possession they found themselves opposed by the defendant no. 1 and they could not get possession. Further, although the decree had been set aside there had been no order setting aside the sale. The result was that the plaintiffs brought the present suit impleading as defendants the defendant no. 1 to whom reference had already been made and the Midnapur Zamindari Company the assignee of the mortgagee.

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The Munsif decided in favour of the plaintiffs and granted them a decree for possession.

The Subordinate Judge on appeal agreed with the Munsif and dismissed the appeal.

A second appeal was preferred to the High Court and was heard by Ross, J. As there had been no definite finding as to fraud and there was apparently no evidence upon the record from which fraud could be inferred the appeal was allowed, the decree was set aside and the case was sent back to the court of the Subordinate Judge and was heard by the successor of the previous Subordinate Judge. The points for consideration were:—

1. Has there been any fraud in the decree or the sale?
2. If so, is the right of the defendant no. 1 affected thereby?
3. Was the decree passed and sale held without jurisdiction?

On each of these points the Subordinate Judge found in favour of the defendant. He found that there was no fraud of any sort from first to last, that the sale was not held without jurisdiction and that the rights of the innocent purchaser for value at that sale were not affected by the fact that the decree had been set aside.

From that decision there was an appeal to the High Court which again came before Ross, J. In so far as the findings of the learned Subordinate Judge were concerned they were entirely in favour of the defendant and there was nothing more to be said. It was shewn that the sale was not without jurisdiction, that there was no fraud either in obtaining the decree or in the sale and the defendant no. 1 being an innocent purchaser for value his rights were in no way affected. A point, however, was raised before Ross, J., which had not been raised in either of the lower courts. It was contended that under section 3 of the Chota Nagpur Encumbered Estates Act the proceedings in execution of the rent decree were barred and were null and void and, therefore, no sale could

be deemed to have taken place and the purchaser acquired no title. That section provides as follows:—

“ On the publication of an order under section 2, the following consequences shall ensue ” (The order there referred to is the order vesting the property in a manager).” First, all proceedings which may then be pending in any Civil Court in British India or in any revenue Court in Bengal in respect to such debt, or liabilities ” that is debts or liabilities of the disqualified proprietor “ shall be barred; and all processes, execution and attachments for or in respect of such debts and liabilities shall become null and void.”

The argument before the Divisional Bench in appeal from the decision of Ross, J., was that the sale in execution of the rent decree was an execution in respect of such debts or liabilities as those mentioned in section 3. The argument was this:—the usufructuary mortgagee was really the creditor of the proprietor; that by the terms of his mortgage he was entitled to collect from the tenants the rents by way of interest upon the mortgage debt and that that really was in the nature of a debt from the proprietor, the mortgagor. In other words instead of recovering the interest from the mortgagor himself he recovered it from the mortgagor's tenants by collecting the rents from them which otherwise would have been paid to the mortgagor. Therefore in that round about way the liability to pay rent to the mortgagees must be regarded as a debt due from the proprietor and any proceedings taken in execution of a decree for rent in such circumstances must be regarded as an execution in respect of such a debt. This argument commended itself to Ross, J., and he accordingly allowed the appeal of the tenants which came before him and set aside the decree of the Subordinate Judge.

From his decision the present appeal was brought by the defendant no. 1, the auction-purchaser, under the Letters Patent.

*A. B. Mukerji* and *B. B. Mukerji*, for the appellants.

*A. K. Roy*, for the respondent.

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DAWSON MILLER, C. J., (after stating the facts set out above, proceeded as follows):—The first thing to be observed with regard to section 3 of the Chota Nagpur Encumbered Estates Act is that it refers to the debts and liabilities of the estate and to processes, executions and attachments in respect of such debts and liabilities. I do not think that the obligation of the tenants to pay rent to the mortgagee in possession can be said to be a debt or liability of the estate. The liability of the tenant cannot be regarded, in my opinion, as a debt of the estate at all. The liability of a tenant to pay his rent is certainly not in any sense of the word a liability of the landlord to anybody. Nor can it be said that this is a process or execution against the estate. The execution is not against the estate of the proprietor but against the estate of the proprietor's tenants. Their liability arose under a decree for rent and I have the greatest difficulty in seeing how the language of section 3 can in any way be applied to the liability of a tenant to pay rent or his liability to have his holding sold under a decree for rent by the mortgagee in possession. That liability arose before the landlord's estate was placed under management and from the moment the decree was passed the liability under it was a liability of the tenant under the decree and in no sense a debt or liability of the mortgagor under the mortgage. I think that the words in the section must be confined to what they say, that is to say, the debts or liabilities of the disqualified proprietor and not the debts or liabilities of somebody else. The result is that, with great respect to the learned Judge, I am unable to agree with the reasoning by which he arrived at his judgment. I think that the section does not cover this case and that the decision ought to be set aside and the appeal allowed. The judgment of the learned Subordinate Judge will be restored and the defendant no. 1 will be entitled to his costs throughout.

KULWANT SARAY, J.—I agree.

Appeal allowed.