

APPELLATE CIVIL.

Before Courtney Terrell, C.J. and Kulwant Sahay, J.

RAJA P. C. LAL CHAUDHURY

v.

GULZAR ALI.*

1933.

October 23,
31.

November
1, 8.

Patni Regulation, 1819 (Reg. VIII of 1819), section 11—sale of Patni tenure in execution of decree for rent payable by patnidar—effect of sale on darpatni tenure—Bengal Tenancy Act, 1885 (Act VIII of 1885), whether affects the provision of the Regulation relating to patni tenures—unsuccessful proceeding for annulment under section 167, whether affects the consequences of sale of patni tenure under the Regulation.

The effect on a darpatni interest of a sale of the patni interest in execution of a decree for the rent payable by the patnidar is to cancel the intermediate tenures if any.

Srimati Krishna Promoda Dassi v. Dwarka Nath Sen(1), followed.

The Bengal Tenancy Act, 1885, does not, in view of the provisions of section 195(e), affect the provisions of the Patni Regulation (VIII of 1819) relating to patni tenures.

Held, therefore, that the mere fact that the landlord took proceedings for the annulment of the darpatni tenure under section 167 of the Bengal Tenancy Act, whether successful or unsuccessful, does not affect the consequences of the sale of the patni tenure enacted by the Patni Regulation.

Durlav Chandra Chowdhuri v. Jamiruddin Ahmad Chowdhuri(2), followed.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Courtney Terrell, C. J.

* Appeals from appellate decrees Nos. 678 to 680 of 1931, against a decision of Rai Bahadur P. L. Sen, Additional District Judge of Purnea, dated the 28th January, 1931, reversing a decision of Maulvi Kabiruddin Ahmad, Munsif of Araria, dated the 2nd January, 1929.

(1) (1913) 17 Cal. W. N. 1092.

(2) (1925) 90 Ind. Cas. 405.

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S. M. Mullick and A. H. Fakhruddin, for the appellant.

Sir Sultan Ahmad and G. N. Mukharji, for the respondents.

COURTNEY TERRELL, C. J.—These appeals arise out of three rent suits brought on November 5th, 1927, by the proprietor of mahal Lat Mirzapur which includes mauza Pachaiwari Jhirua to recover the rent for the 12-annas kist of the year 1333, for the whole of 1334 and the first 8-annas kist of 1335. The tenants (defendants 1st party) set up various defences, that with which we are concerned being that the rent was payable by them as raiyats not to the landlord plaintiff but to a darpatnidar under a patnidar (Babu Maharaj Bahadur) who in turn held his patni tenure under the landlord by virtue of a patta of the year 1854 which gave no authority to the patnidar to create darpatni interests of the kind under consideration. The patnidar was made defendant 2nd party.

It appears that in the year 1924 the plaintiff had sued the patnidar for arrears of his rent and in execution had put to sale and purchased the tenure in 1925. The sale was confirmed on April 22nd, 1926, and after an unsuccessful appeal to the High Court the landlord got delivery of possession on May 7th, 1927. The patnidar, Maharaj Bahadur, had before the sale executed a darpatni to an intermediate tenure-holder and on July 5th, 1927, after he had ceased to be a patnidar he purchased from the darpatnidar the darpatni interest and thus purported to have re-inserted himself between the landlord and the raiyat-tenants. The landlord on June 28th, 1926, after the decision in his favour against the patnidar had applied under section 167 of the Bengal Tenancy Act to annul the tenures between himself and the raiyat-tenants, but the raiyats in the present suit contended and the Court below has held that the proceedings for annulment were void on the ground that they were

not taken in time. The landlord, however, falls back on section 11 of the Patni Regulation VIII of 1819 and contends that the darpatni interest was cancelled when he took the unequivocal step of applying for cancellation on June 28th, 1926. At that time Maharaj Bahadur had no interest whatever for he had lost his patni tenure by sale in 1925 and he did not purport to acquire the darpatni interest which he had created while patnidar, until his purchase from the darpatnidar on July 5th, 1927, so that he was not a necessary party and required no notice of intention to cancel. It was contended before us on behalf of the raiyat-defendants that having elected to take steps under section 167 of the Bengal Tenancy Act to cancel the darpatni interest, the plaintiff could not fall back on any rights under the Patni Regulation. This argument was raised in *Durlav Chandra Chowdhuri v. Jamiruddin Ahmad Chowdhuri*⁽¹⁾ and negatived. It was held in that case "The Bengal Tenancy Act does not, in view of the provisions in section 195(e), affect the rights of patnidars under the Patni Regulation and so the rights of the parties have to be determined under it. The plaintiff has doubtless in the present case based his cause of action on the Bengal Tenancy Act, but if his right to recover possession is found to exist under some other provision of law it would be sacrificing substance to form to deny him such right".

It is argued that proceedings under the Patni Regulation could only be taken for one year's rent and that there was a difference between annulment under that enactment and annulment under the Bengal Tenancy Act. At the date of the Patni Regulation all proceedings against patnidars were governed by it. It is true that by the Rent Act of 1859 a further process was introduced for proceedings for rent and for annulment of intermediate tenures but these were in addition to and not in substitution for the proceedings under the Patni Regulation in relation to patni

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tenures. The Bengal Tenancy Act again developed and expanded such proceedings and by section 195 of the Bengal Tenancy Act

" Nothing in this Act shall affect any enactment relating to patni tenures, in so far as it relates to those tenures."

The effect on a darpatni interest of a sale of the patni interest in execution of a decree for the rent payable by the patnidar has been the subject of discussion in many cases which were finally reviewed in the authoritative decision of Sir Lawrence Jenkins, C.J. in *Srimati Krishna Promoda Dassi v. Dwarka Nath Sen*⁽¹⁾ and it was held that the effect of the sale was to cancel the intermediate tenures if any. The mere fact that the landlord took proceedings under section 167 of the Bengal Tenancy Act, whether successful or unsuccessful, does not affect the consequences of the sale of the patni tenure enacted by the Patni Regulation. The second paragraph of section 11 of the Regulation is independent of the first and is as follows:—

" In like manner, on sale of a taluk for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the rayats; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent."

I am of opinion that the intermediate tenure which is supposed to have been purchased by Maharaj Bahadur had no existence after the sale of the patni interest on June 4th, 1925. The defendants have, therefore, no defence and I would allow these appeals with costs and restore the decrees of the Munsif.

KULWANT SAHAY, J.—I agree.

Appeals allowed.

(1) (1913) 17 Cal. W. N. 1092.