1938.

BAHURIA RAM SAWARI KUER v. DULHIN MOTIRAJ KUER. DHAVLE AND AGARWALA, JJ.

The appeal must, in our opinion, be allowed, and the order of rejection passed by the lower appellate court set aside, the case being sent back to the lower appellate court for disposal in accordance with the law.

S. A. K.

Appeal allowed.

FULL BENCH.

1938.

August, 22.

Before Wort, A.C.J., Varma and Manohar Lall, JJ.

NRIPENDRA NATH CHATTERJEE

v.

KULDIP MISRA.*

Landlord and tenant—sale in execution of rent decree—notification of arrears for subsequent years in sale proclamation, effect of—landlord auction-purchaser, how far affected by the notification—suit for rent for those years, whether maintainable.

Where in a sale proclamation it was notified that the arrears of rent for subsequent years were an incumbrance, *held*, that the auction-purchaser purchased the holding subject to the incumbrance. A landlord auction-purchaser was in no better position than a stranger purchaser and, therefore, he was debarred from bringing a suit for rent for those years.

Sailaja Prasad Chatterjee v. *Gyani Das*(1) and *Kamaldhari Lal* v. *Tarachand Marwari*(2), followed.

Jugal Kishore Narayan Singh v. *Bhatu Modi*(3) and *Haradhan Chattoraj* v. *Kartik Chandra Chattopadhaya*(4), distinguished.

---

*Appeal from Appellate Decree no. 419 of 1936, from a decision of Babu Kshetra Mohan Kumar, Subordinate Judge of Bhagalpur, dated the 11th March, 1936, affirming a decision of Babu Damodar Prasad, Munsif of Bhagalpur, dated the 16th September, 1935.

(1) (1912) 18 Cal. L. J. 29.
(2) (1934) 16 Pat. L. T. 73.
(3) (1923) I. L. R. 2 Pat. 720.
(4) (1902) 6 Cal. W. N. 877.

Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of Wort, A.C.J.

The appeal was heard in the first instance by Wort, J. who referred it to a Division Bench by the following judgment:

WORT, J.—I propose to refer this case to a Division Court for decision.

I find some difficulty in the decisions of this court, particularly the case of *Jugal Kishore Narain Singh* v. *Bhatu Modi*(1) and the case of *Kamaldhari Lal* v. *Tarachand Marwari*(2) decided by my brother James. From the decision of my brother James, I should feel inclined to hold that there can be no difference between an auction-purchaser being a third party and an auction-purchaser who is the landlord or decree-holder himself. I should have stated that I am concerned in this case with the question of the liability for rent between the date of the decree and the date of the sale in execution of a rent decree, the proclamation having stated that there were arrears for that period. *Jugal Kishore's* case(1) was a case of two decrees for rent for consecutive periods, and Mullick, J. (who delivered the judgment of the Court) was of the opinion that the landlord was not estopped by reason of the statements in the sale proclamation, of the fact of the second decree, from taking out execution with regard to that second decree I must say I can see no particular difference between a decree and a liability for rent which has not so far been subject of a decree, and, as I have already said, on the other hand, from the decision of my brother James, I should feel bound to come to the conclusion that if a third party purchaser is liable to pay the arrears of rent which were notified in the sale proclamation and the tenant is relieved from that payment, the result of the purchase by the landlord would be that the tenant was relieved of payment, although of course there will be no liability by the landlord to himself, necessarily.

In referring the case to a Division Bench, I would like to mention the case of *Haradhan Chattoraj* v. *Kartick Chandra*(3), a decision of which Mr. Justice James has never been in doubt, the decision in *Syed Mohammad Jawad Hussain* v. *Gopal Narain Singh*(4), the case of *Faez Rahman* v. *Ramsukh Bajpai*(5) and also the case to which I have already referred.

(1) (1923) I. L. R. 2 Pat. 720.

(2) (1934) 16 Pat. L. T. 73.

(3) (1902) 6 Cal. W. N. 877.

(4) (1921) 2 Pat. L. T. 248.

(5) (1893) I. L. R. 21 Cal. 169.

1938.

NRIPENDRA NATH CHATTARJEE v. KULDIP MISRA.

The case then came up for hearing before Wort, A.C.J. and Manohar Lall, J. who referred it to a Full Bench by the following Order of Reference:

WORT, A.C.J.—The only course that I think can be adopted in this case, having regard to the decision in *Jugal Kishore Narain Singh* v. *Bhatu Modi*(1), is to refer the matter to a larger Bench. It would appear that this very point has been decided in the Calcutta High Court in *Sailaja* v. *Gyani*(2) and for reasons there expressed which, speaking for myself, appeal to me more than once, as well as for the reasons stated by Mullick, J., the case is referred to a Full Bench.

MANOHAR LALL, J.—I agree

On this reference,

S. C. Mazumdar (with him *Vishnu Deca Narain* and *Ram Anugrah Narain Singh*), for the appellant: The landlord has two remedies: he can enforce the charge under section 65 of the Bengal Tenancy Act or he can proceed against the tenant personally. A suit for rent is also a suit to enforce the personal liability of the tenant to pay a certain sum of money to the landlord and a decree may be made enforcing this liability where a decree cannot be made enforcing the charge. The law is well settled that an auction-purchaser is not liable for the arrears of rent that have accrued due after the suit and before the sale; in such a case it is the tenant alone who is liable for the arrears. [Reference was made to *Faez Rahman* v. *Ramsukh Bajpai*(3) and *Syed Mohammad Jawad Hussain* v. *Maharaja Kumar Gopal Narain Singh*(4)].

[WORT, A.C.J.—What is the law with regard to strangers purchasing a holding in execution of a decree for arrears of rent, subject to a charge for outstanding rent?]

The law is that if a third party purchases the holding subject to a charge notified in the proclamation, he is bound by it and he cannot be heard to

(1) (1923) I. L. R. 2 Pat. 720.
(2) (1912) 18 Cal. L. J. 29.
(3) (1893) I. L. R. 21 Cal. 169.
(4) (1921) 2 Pat. L. T. 248.

repudiate the liability which he has undertaken to satisfy—*Faez Rahman* v. *Ramsukh Bajpai*(1); *Jugal Kishore Narayan Singh* v. *Bhatu Modi*(2).

[WORT, A.C.J.—Is the position of a landlord purchaser different from that of a third party purchaser?]

Yes; otherwise the landlord would be left without a remedy. When a stranger purchases a holding subject to such a charge, the holding in his hands would be liable for the past rent and the landlord may proceed against the holding or he may still enforce the personal liability of the tenant. If the landlord purchases the holding, and the encumbrance is notified, he can still resort to the second remedy by suing the tenant. If, as is suggested, the landlord cannot sue the tenant, he would be left without a remedy and the arrears of rent to which he is entitled cannot at all be realized by any mode.

The case of *Jugal Kishore* v. *Bhatu*(2) is on all fours with the facts of the present case. There Mullick, J. pointed out that even after the sale the *landlord purchaser* could proceed against the tenant for arrears of rent which had already fructified into a decree. The only difference between that case and the present one is that in *Jugal Kishore's case*(2) there was a decree for arrears of rent which was sought to be executed while in our case it is the liability for rent which the landlord is seeking to enforce. Mullick, J. further pointed out that the principle of the decision in *Haradhan Chattoraj* v. *Kartik Chandra*(3) had no application at all where the decree-holder is himself the purchaser. In *Sailaja Prosad Chatterjee* v. *Gyani Das*(4) the distinction between the two remedies open to a landlord was not clearly brought out.

(1) (1893) I. L. R. 21 Cal. 169.
(2) (1923) I. L. R. 2 Pat. 720.
(3) (1902) 6 Cal. W. N. 877.
(4) (1912) 18 Cal. L. J. 29.

1938.

NRIPENDRA NATH CHATTARJEE v. KULDIP MISRA.

There is no question of any estoppel or prejudice here—*Jugal Kishore Narayan Singh* v. *Bhatu Modi*(1).

G. C. Das, for the respondent: On principle there is absolutely no distinction between a third party purchaser and a landlord purchaser. The effect of the notification of the incumbrance in the sale proclamation appears to be that the holding is sold subject to the liability for arrears of rent—*Kamaldhari Lal* v. *Tarachand Marwari*(2). This means that the tenant would no longer be personally liable for such rent; in other words, the liability is attached to the holding. If the landlord happens to be the purchaser, the debt in his favour is extinguished. The landlord in notifying the charge gave out that the holding would be liable for the rent and presumably paid all the less for it. He is estopped from proceeding against the tenant. As Das, J. remarked in *Maharaja Kesho Prosad Singh* v. *Musammat Paramjota Koer*(3), "you notify to the world that you are selling the holding subject to the rent charge in your favour, then clearly you have elected to hold the holding responsible for your rent, and cannot proceed against the properties of the judgment-debtor other than the holding.....By virtue of the notification, the purchaser purchases the holding subject to the rent charge, and the holder of the charge cannot be heard to say, 'Now that I have purchased the holding, I will waive the charge and proceed against the properties other than the holding' ". The landlord has made the election once for all. The case of *Jugal Kishore Narayan Singh* v. *Bhatu Modi*(1) proceeded on the footing that both the decrees were alive. Their Lordships did not attempt to decide the point that falls to be considered here. The case that is of real assistance to us is that

(1) (1923) I. L. R. 2 Pat. 720.
(2) (1934) 16 Pat. L. T. 73.
(3) (1921) 6 Pat. L. J. 354.

of *Sailaja Prosad Chatterjee* v. *Gyani Das*(1) where the identical point was considered.

Mookerjee, J. has considered the argument, as is advanced here, that the landlord has two remedies and if he purchases the holding he does not lose the personal remedy against the tenant. I also rely on *Hardhan Chattoraj* v. *Kartik Chandra*(2) which is in point.

S. C. Mazumdar, in reply.

S. A. K.

WORT, A.C.J.—This case was referred to a Full Bench as there seemed to be some question with regard to the decision in *Jugal Kishore Narain Singh* v. *Bhatu Modi*(3) particularly having regard to a decision in the Calcutta High Court on the point at issue.

The short facts are these. The appellant who was the landlord obtained a decree for rent and taking out execution got the property sold on the 3rd of August, 1934, becoming the purchaser. Between the time of the rent decree and the date which I have just stated other arrears of rent accrued and there can be now no dispute that in the sale arising out of the execution of the rent decree to which I have already referred the property was put up for sale subject to those arrears of rent, in other words, subject to these incumbrances.

Mr. Mazumdar who argues the case on behalf of the appellant contends that on a proper reading of the sale proclamation this was not the fact. But this being a second appeal and both the courts below having held that it was so sold it is impossible to accept the contention of Mr. Mazumdar in this regard. We can take it, therefore, that the property

(1) (1912) 18 Cal. L. J. 29.
(2) (1902) 6 Cal. W. N. 877.
(3) (1923) I. L. R. Pat. 720.

1938.

NRIPENDRA NATH CHATTARJEE v. KULDIP MISRA.

WORT, A.C.J.

was sold subject to these encumbrances and the real point at issue is whether Mr. Mazumdar's client, being the decree-holder and a purchaser, is in a different position from a third party purchaser. It is conceded, indeed it has been decided in a number of cases, that a third party purchaser would be liable to pay off the encumbrance which was notified in the proclamation. The argument on behalf of the appellant is that a decree-holder purchaser is in a different position. In this connection and in support of the argument the case of *Jugal Kishore Narain Singh* v. *Bhatu Modi*(1) is relied upon. Before dealing with that case, however, I would refer to the decision of my learned brother James in *Kamaldhari Lal* v. *Tarachand Marwari*(2), an authority for the proposition, which I stated a moment ago, to the effect that " an auction-purchaser who purchased a holding with notice that it is saddled with liability for arrears of rent for a period anterior to the date of the sale is liable for the rent of that period ". There was an argument addressed to us by Mr. Mazumdar to the effect that the notification in the sale proclamation in the circumstances was illegal and that, therefore, no liability can accrue on the footing that there was such a notification. James, J., in the case to which I have referred, pointed out that in *Jugal Kishore Narain Singh's* case(1) the decision of this Court was not that it was an illegality but an irregularity. In my opinion, no support can be got by the decree-holder from that contention. We come back to the point at issue, namely, whether the decree-holder is in any different position from that of a third party purchaser. On the one hand, the case to which I referred a moment ago—*Jugal Kishore Narain Singh* v. *Bhatu*(1) is relied upon by Mr. Mazumdar, and on the other hand, against that contention is the case of *Sailaja*

(1) (1923) I. L. R. 2 Pat. 720.
(2) (1934) 16 Pat. L. T. 73.

1938.

NRIPENDRA NATH CHATTARJEE v. KULDIP MISRA.

WORT, A.C.J.

Prosad Chatterjee v. *Gyani Das*(1). I propose to deal with that case first. The facts of that case were that two decrees had been obtained by the decree-holder, one in 1904 and another in 1906. The decree of 1906 was a money-decree, the earlier one a rent decree; and in putting up the property in execution of the second decree there was a notification with regard to the decree of 1904. The argument addressed to the Court in that case was the same argument as Mr. Mazumdar addresses to us in this case, namely, that the decree-holder had two remedies open to him. He could put up the property for sale, in other words, execute for his charge upon the property or he could obtain a money decree: in other words, hold the judgment-debtor personally liable; and it is his contention in the case before us that in bringing an action for rent he is pursuing the personal remedy against his judgment-debtor or tenant. Mookerjee, J. in the case made this observation: "It may be conceded that a decree-holder who has obtained a decree for rent is free to proceed against any property of the judgment-debtor; he is under no obligation to proceed in the first instance against the defaulting tenure. This principle, however, is of no assistance to the decree-holders". The learned Judge then goes on to point out what was the real question in the case and subsequently made this observation: "It was thus, at their instance, that the proclamation was very properly made that the tenure would be sold subject to the judgment-debt under the decree of 1904. Whoever, therefore, purchased at the sale, would take the property subject to the liability notified, and it makes no difference that the decree-holders themselves are the purchasers; the judgment-debt in their favour must consequently be deemed to have been extinguished". If I may say so with respect to the learned Judge, it is impossible to add

(1) (1912) 18 Cal. L. J. 29.

1938.

KRIPENDRA NATH CHATTARJEE v. KULDIP MISRA.

WORT, A.C.J.

to the reasoning which he there gives in dealing with a proposition silimar to the one before us. Now, as regards the authority upon which Mr. Mazumdar relies [*Jugal Kishore Narain Singh* v. *Bhatu Modi*(1)] particular stress is laid upon the observation of late Sir Basanta Mullick to this effect "in such cases (that is to say, in cases where there is a notification such as in the case before us) the auction-purchaser is concluded by *res judicata* and the landlord is competent to proceed in the first instance against the holding and to call upon the auction-purchaser to discharge the liability which he has undertaken. He then referred to the decision in *Haradhan Chattoraj* v. *Kartik Chandra Chattopadhaya*(2) and said "But that case has no application at all where the decree-holder is himself the purchaser". The Subordinate Judge in the case in which Sir Basanta Mullick was delivering judgment had held that the decree-holder himself being the auction-purchaser and having bought the holding subject to the liability the debt was satisfied and the execution could not proceed. The learned District Judge, whose judgment this Court reversed, had held that there was an equitable estoppel and the proper remedy for the decree-holder was to sell the holding and then, if the decree remained unsatisfied, to proceed against other properties of the judgment-debtor. The effect of the High Court judgment was to hold that the decree-holder was under no such obligation as stated by the District Judge. But the vital difference between that case and the case before us is that it was recognized by all parties concerned that the decree was alive contrary to the decision of the Subordinate Judge. In my judgment, therefore, that decision can be of no assistance to the decree-holder in this case, and speaking for myself, I fail entirely to see any error (if I may use the expression) in the reasoning of Mookerjee, J. in the case of

(1) (1923) I. L. R. 2 Pat. 720.
(2) (1902) 6 Cal. W. N. 877.

1938.

NRIPENDRA NATH CHATTARJEE v. KULDIP MISRA.

WORT, A.C.J.

Sailaja Prosad Chatterjee v. *Gyani Das*(1). To state the matter in other words, on principle it is impossible to distinguish between the position of a third party purchaser who purchased the property subject to the encumbrance and that of the decree-holder who himself purchased under like circumstances.

In my opinion, therefore, the appeal fails and is dismissed with costs, and the suit dismissed with costs throughout.

VARMA, J.—The facts of the case have been quite clearly summarised by the courts below. There was a decree for rent for the years 1334 to 1337 and in execution of that decree the property was sold on the 3rd of August, 1934. In the sale proclamation it was mentioned that there were arrears of rent for the subsequent period, i.e. 1338-1341 F. which were an encumbrance on the property. The present appellant filed a suit on the 26th of September, 1934, to recover rents for the years 1338 to 1341. This suit was dismissed on the 16th of September, 1935, about six days after the sale (that was held on the 3rd of August, 1934) was confirmed. The suit was dismissed on the ground that when the decree-holder purchased the property in execution of his decree and subject to the encumbrance, he put himself in the position of the tenant and, therefore, he combined in himself for the time being the attributes of a landlord as well as a tenant, and therefore he was not entitled to get a decree. On appeal also the same view was held and the lower appellate court confirmed the judgment of the trial court.

Mr. Mazumdar appearing on behalf of the appellant before us has relied mainly upon the decision in *Jugal Kishore Narain Singh* v. *Bhatu Modi*(2). But, as has just now been pointed out, there were certain points that are at issue in this

(1) (1912) 18 Cal. L. J. 29.
(2) (1923) I. L. R. 2 Pat. 720.

1938.

NRIPENDRA NATH CHATTARJEE v. KULDIP MISRA.

MANOHAR LALL, J.

case which were taken for granted in *Jugal Kisho Narain Singh's* case(1). The case that is really similar to the case in hand was the case of *Sailaja Prosad Chatterjee v. Gyani Das*(2); there the argument that was so strenuously adavnced by Mr. Mazumdar in this case had been amply disposed of. To make my meaning clear, I would just mention that Mr. Mazumdar always insisted upon saying that the landlord had two remedies: (*1*) that he could proceed against the tenure and (*2*) that he could also proceed against the tenant. While advancing this theory there seems to have been some misapprehension as to what the real nature of the remedy of the landlord was—whether these two kinds of remedies overlapped or whether the landlord could get two distinct decrees with regard to his dues against the tenant. Now, as I have already stated, the case, of *Sailaja Prosad Chatterjee* v. *Gyani Das*(2) has sufficiently met this line of argument. It is said by Mookerjee, J. in that case: "It may be conceded, as was pointed out by this Court in the case of *Fotick Chunder Dey* v. *Foley*(3) and *Surendra Mohan Tagore* v. *Surnomoyi*(4), that a decree-holder who has obtained a decree for rent is free to proceed against any property of the judgment-debtor; he is under no obligation to proceed in the first instance against the defaulting tenure. This principle, however, is of no assistance to the decree-holders. The real question in the present case is, whether the effect of the purchase by the appellants has been to extinguish their rights under the rent decree. When they took out execution of the money-decree against the tenure, they were bound to notify that they held a decree for rent enforceable against it; if they had not notified the rent charge, they

(1) (1923) I. L. R. 2 Pat. 720.

(2) (1912) 18 Cal. L. J. 29.

(3) (1887) I. L. R. 15 Cal. 492.

(4) (1898) I. L. R. 26 Cal. 103.

could not have subsequently pursued the property, in the hands of a bona fide purchaser, for the satisfaction of their dues ". I have no hesitation in holding that the decision in *Sailaja Prosad Chatterjee* v. *Gyani Das*(1) applies to the facts in this case and I would, therefore, dismiss the appeal with costs.

MANOHAR LALL, J.

MANOHAR LALL, J.—I entirely agree with the judgment just delivered by my Lord the Chief Justice. The sale proclamation printed at page 11 states that the annual rental of this holding was Rs. 20 besides cess. The holding was sold for a sum of Rs. 40-2-3 which is obviously far below the real value. In those circumstances the landlord cannot be heard to say that, notwithstanding the fact that he (the plaintiff in the present case) purchased the tenure subject to the incumbrance contained in the proclamation (just referred to), the tenant is liable for the arrears, for which the present suit has been instituted, as this would make the landlord a gainer at the expense of the tenant defendant [*see Haradhan Chattoraj* v. *Kartik Chandra Chattopadhya*(2)]. The case of *Sailaja Prosad Chatterjee* v. *Gyani Das*(1) contains an accurate exposition of the law on the subject and concludes the present appeal. The decision of this Court in *Jugal Kishore Narayan Singh* v. *Bhatu Modi*(3), as I pointed out in the course of the argument, assumes that the decree was alive and therefore never attempted to decide the question before us.

J. K.

Appeal dismissed.

(1) (1912) 18 Cal. L. J. 29.

(2) (1902) 6 Cal. W. N. 277.

(3) (1928) I. L. R. 2 Pat. 720.