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the line at which the words of the section cease to be plain. That is a necessary and logical corollary of the general proposition that you ought not to give a larger retrospective power to a section, even in an Act which is to some extent intended to be retrospective, than you can plainly see the Legislature meant." I am, therefore, constrained to hold that the section does not apply to transactions which were concluded before the 1st of April, 1930, irrespective of the fact whether they were or were not the subject of any pending action on the first of April, 1930.

For these reasons I would answer the second question in the negative.

For the reasons given by Fazl Ali, J. I agree to the answer proposed to the first question.

*Answer accordingly.*

S. A. K.

## APPELLATE CIVIL.

*Before Agarwala and Rowland, JJ.*

CHHATAR SINGH

v.

SYED SHAH QASIM GHANI.\*

*Bihar Tenancy Act, 1885 (Act VIII of 1885), sections 53, 65, 67 and 169(1)(c)—sale in execution of decree for arrears of rent—purchaser liable for rent after confirmation of sale—original tenant, whether liable for rent accruing due between the date of sale and the date of confirmation—rent, when accrues due—amended section 67, whether retrospective—interpretation of statutes.*

Where a tenure or holding is sold in execution of a decree for arrears of rent, the only person to whom the landlord can look for his rent from the date of the confirmation of the sale is the auction-purchaser.

\*Appeal from Original Decree no. 121 of 1938, from a decision of Babu Braj Bilas Prasad, Subordinate Judge of Gaya, dated the 21st December, 1937.

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Rent is to be regarded not as accruing from day to day but as falling due, in the absence of any contract, on the last date of the period in respect of which it is payable.

Where, therefore, the sale was confirmed on the 20th of Phagun, held, that the purchaser was liable for the whole rent payable in respect of the Phagun kist, although a portion of the period fell between the date of the sale and the date of the confirmation of the sale.

*Satyendra Nath Thakur v. Nilkantha Singha*(1), followed.

It is clear from the provision of section 169(1)(c) of the Bihar Tenancy Act, 1885, that the judgment-debtor, namely, the original tenant, and not the auction-purchaser, is liable for the rent accruing due between the date of the sale and the date of the confirmation of the sale.

*Bejoy Chand Mahtap v. Sashi Bhushan Bose*(2) and *Ramlal Das v. Bandiram Mokhopadhya*(3), dissented from.

*Jugal Kishore Narayan Singh v. Bhatu Modi*(4), *Kamaldhari Lal v. Tarachand Marwari*(5), *Haradhan Chatteraj v. Kartik Chandra Chattopadhya*(6) and *Nripendra Nath Chatterji v. Kuldip Misser*(7), referred to.

Section 65 of the Code of Civil Procedure, 1908, determines priority as between purchasers at successive sales. It is not meant to confer on a defaulting tenant the privilege of rent-free occupation for so long as he or the decree-holder can delay confirmation of the sale.

In a suit for rent the landlord enforces a charge for the rent not only up to the date of suit but rent that should accrue due up to the date of the confirmation of the sale, and if that is the extent of the charge that he seeks to enforce, that will also be the extent of the charge which is extinguished by the sale held in execution of the decree made in the suit.

Where there is a repugnancy between any provision of the Bihar Tenancy Act and anything contained in the Code

(1) (1893) I. L. R. 21 Cal. 363.

(2) (1913) 18 Cal. W. N. 136.

(3) (1919) 26 Cal. W. N. 511.

(4) (1923) 4 Pat. L. T. 640.

(5) (1934) 16 Pat. L. T. 73.

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

(7) (1938) I. L. R. 17 Pat. 694, F. B.

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of Civil Procedure, the special law, that is to say, the Bihar Tenancy Act, must be held to prevail and the more general enactment, that is to say, the Code of Civil Procedure, will to that extent not be applicable.

The amended section 67 of the Bihar Tenancy Act, 1885, is not retrospective.

Appeal by the defendant.

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

*Ganesh Sharma* (with him *Braja Kishore Prasad Sinha* and *Ram Pratap Sinha*), for the appellant.

*M. Hasan Jan* and *Syed Ali Khan*, for the respondents.

ROWLAND, J.—In this First Appeal the defendant-appellant was an auction-purchaser of the rent-claimed tenures and the main question is, from what date he became liable for the rent. The landlord had obtained an earlier rent decree against Deo Bihari, the tenure-holder, in execution of which the tenure was sold and purchased at auction by the present defendant, Chhatar Singh, on 19th June, 1933. The landlord brought this suit impleading both the former tenant, Deo Bihari, and the purchaser Chhatar Singh and claiming rent for all kists (there are nine kists per year) of the years 1341 to 1343. Subsequently Deo Bihari was discharged from the record and the landlord claimed rent from Chhatar Singh only for the entire period, whereas the defendant contended that he was not liable for rent for the period before October, 1934, when he took delivery of possession. Relevant dates are 19th June, 1933, auction-sale; 19th February, 1934, confirmation of sale after disallowing the objection of the decree-holders. This date corresponds to the 20th Phagun, 1341 Fasli. Again on 19th March, 1934, the decree-holders appealed but their appeal was dismissed under Order XXI, rule 11, on 20th April, 1934. The Subordinate Judge held that the defendant was not

liable for instalments accruing due before 19th February, 1934, totalling Rs. 734-3-0 but was liable for the kist of Phagun, 1341, and all subsequent kists.

Another point was raised in this appeal, namely, that the lower court erred in allowing interest on the arrear of rent at  $12\frac{1}{2}$  per cent. The latter contention need not detain us long. It is based on the amendment made in 1937 to section 67 of the Bihar Tenancy Act. Previous to that amendment the statutory rate of interest was  $12\frac{1}{2}$  per cent. per annum. The amendment declares that

“An arrear of rent shall bear simple interest at the rate of six and a quarter per centum per annum.”

The amendment came into force on the 29th December, 1937, and the decree of the Subordinate Judge was passed on the 21st December, 1937, that is to say, it was clearly a correct decree on the date when it was passed. Interest after decree has been allowed at 6 per cent. and no objection is taken to this. The new section 67 does not apply as it is not expressed to be retrospective.

As to the date from which the plaintiffs are entitled to rent there is an appeal by the defendant as well as a cross-objection by the plaintiffs. The defendant contends that until he obtained delivery of possession he should not be liable to pay rent in the circumstances of this case because the delay in his getting possession of the property was due to the decree-holder having resisted his right as purchaser of the property by preferring an objection under section 173 of the Bihar Tenancy Act alleging that the defendant, Chhatar Singh, was only a benamidar for the judgment-debtor and the decree-holder sought to have the sale set aside on this ground. The objection being disallowed the decree-holder appealed and so it is said that even if the defendant is not entitled to be excused from paying rent up to October, 1934, when he received delivery of possession he should at

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least be excused from payment up to the date of the dismissal of the plaintiffs' appeal to the District Judge; for up to that date even if it was lawful for him to take possession there was the risk of the sale being set aside. There might be some equity in favour of the appellant if the decree-holder had obtained an order of the District Judge staying delivery of possession, but there was no such order passed and in this state of the facts we can find no legal basis for the argument. The position, it seems, is governed by section 169(1)(c) of the Bihar Tenancy Act. The decree-holder is entitled to receive from the surplus sale proceeds any rent which may have fallen due in respect of the tenancy between the institution of the suit and the date of the confirmation of the sale and no longer. It is quite clear then that from the date of the confirmation of the sale the only person to whom the landlord can look for his rent was the auction-purchaser.

Then it is contended that even on this view the Phagun kist which amounts to Rs. 210-13-0 should be excluded; but the matter is governed by section 53 of the Bihar Tenancy Act which has been explained in *Satyendra Nath Thakur v. Nilkantha Singha*(1). Each instalment of rent is considered to fall due on the last date of the period in respect of which it is payable. Therefore, the kist for Phagun must be considered to have fallen due on the last date of that month. As pointed out in this decision, rent is not considered as accruing from day to day. The objection was raised in that case that on this view it might go very hard against the purchaser of the tenure who would be made liable for rent due in respect of the whole of a period of time when he has had possession only for a part of that period, and it may be for a very small part. The answer to this objection was that the purchaser can always protect himself when making his purchase by paying for the property only so much

(1) (1898) I. L. R. 21 Cal. 383.

as is equivalent to its value, regard being had to the liability with which it is burdened.

In cross-objection the extreme claim that the landlord should get from the purchaser rent for the entire period in suit is manifestly untenable and is not pressed; but it is contended that he should get rent with effect from the date of sale and for this reference is made to section 65 of the Civil Procedure Code under which the property is deemed to have vested in the purchaser at an auction sale from the time when the property is sold and not from the time when the sale becomes absolute. This provision in the present Code is a distinct departure from section 316 of the old Code of 1882 by which the title to immoveable property sold at an execution sale vested in the purchaser from the date of the sale certificate, that is, the date on which the sale became absolute. Mr. Hasan Jan for the cross-objectors relies on *Bejoy Chand Mahtap v. Sashi Bhusan Bose*(<sup>1</sup>). Here it was held that as a consequence of the alteration occasioned by section 65 of the Civil Procedure Code the judgment-debtor is not liable for rent beyond the time when the property is sold and the liability of the surplus sale proceeds under clause (c) of section 169 of the Bengal Tenancy Act must be similarly limited so as to correspond with this. This decision was followed without comment in a later case of the same High Court in *Ramlal Das v. Bandiram Mokhopadhyaya*(<sup>2</sup>); but with great respect to the learned Judges who decided those cases it seems to me that their attention was not drawn to section 143 of the Bengal Tenancy Act. The Code of Civil Procedure under this section applies to rent suits only subject to rules made under the Tenancy Act and subject also to the other provisions of the Tenancy Act. The result of this is that where there is a repugnancy between any provision of the Bengal Tenancy Act and anything contained in the Civil Procedure Code the special law,

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(2) (1919) 26 Cal. W. N. 511.

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that is to say, the Bengal Tenancy Act, must be held to prevail and the more general enactment, that is to say, the Civil Procedure Code, will to that extent not be applicable. It is stated in the clearest terms in section 169(1)(c) that the decree-holder is entitled to draw from the surplus sale proceeds any rent which may have fallen due to him up to the date of the confirmation of the sale. I am at a loss to understand how it can be said that a contrary result can follow without conflict with the express words of this section, and, indeed, without injustice. For the judgment-debtor cannot be ousted from possession till the sale is confirmed. Section 65 of the Civil Procedure Code determines priority as between purchasers at successive sales. I cannot suppose it is meant to confer on a defaulting tenant the privilege of rent-free occupation for so long as he or the decree-holder can delay confirmation of the sale.

But it is said that even if the decree-holder retains his charge on the surplus sale proceeds this would not deprive him of the remedy against the auction-purchaser. In fact it is suggested that the present procedure is so beneficial to the landlord as to give him a double remedy. There are, however, difficulties in taking this view. The rent is of course declared by section 65 of the Bihar Tenancy Act to be a first charge on the tenancy. Now the ordinary rule as to the consequences of a suit to enforce a charge or a mortgage is that on sale of the charged or mortgaged property the purchaser acquires the rights of both mortgagor and mortgagee, so that the charge or mortgage sought to be enforced is extinguished. It is true that rent is in a special position because it accrues periodically and a fresh charge is always being created anew in respect of rent freshly accrued; but what we have to see is for what rent was the decree-holder enforcing a charge. I think that the only interpretation we can place on section 169(1)(c) is that he was enforcing a charge for the rent not only up to the date of suit but rent that should accrue due up to

the date of the confirmation of the sale and if that was the extent of the charge that he was enforcing that will also be the extent of the charge which is extinguished.

The general rule is as stated in *Jugal Kishore Narayan Singh v. Bhatu Modi*<sup>(1)</sup> and *Kamatdhari Lal v. Tarachand Marwari*<sup>(2)</sup>. "It is settled that after a holding has been once sold in execution of a rent decree and has passed out of the possession of the tenant, it cannot again be sold in execution of any other decree for rent due by the same tenant". The rule is not abrogated by the decisions which recognise one special case in which the purchaser may become liable to pay rent accruing due before the date of sale or of its confirmation. That case arises when, as in *Haradhan Chatteraj v. Kartik Chandra Chattopadhyaya*<sup>(3)</sup>, notice has been given in the sale proclamation itself that the holding is being sold subject to a liability for earlier arrears of rent. The decisions of this Court which I cited above were considered in *Nrupenara Nath Chatterji v. Kuldip Misser*<sup>(4)</sup> and with regard to the application of the exception *Jugal Kishore's* case<sup>(1)</sup> has not been accepted, but the general rule to which it is an exception has not been questioned and stands good.

The result will be that the appeal and cross-objection will both be dismissed with costs.

AGARWALA, J.—I agree.

S.A.K. *Appeal and Cross-objection dismissed.*

(1) (1923) 4 Pat. L. T. 640.

(2) (1934) 16 Pat. L. T. 78.

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

(4) (1938) I, L. R. 17 Pat. 694, F. B.

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