

1301
AUG. 28.
—
APPELLATE
CIVIL.
—
29 C. 219.

properties sold into two parts, one covered by the sale in satisfaction of one part of the claim, and the other covered by the sale in satisfaction of the other part, the whole sale must be held to have been a sale under the ordinary law, that is the Code of Civil Procedure and not carrying with it any of the incidents of a sale under the Bengal Tenancy Act.

But there is another answer to this contention. Whatever might have been the nature of the claim, if at the time the suit was brought and decree obtained and enforced by sale of the tenure, the decree holders did not constitute the entire body of landlords, the sale could not be treated as a sale of a tenure in execution of a rent decree under the Bengal Tenancy Act. The view I take is in accordance with that taken by this Court in the case of *Hem Chunder Bhunjo v. Mon Mohini Dasi* (1).
Appeal dismissed.

29 C. 223.

Before Mr. Justice Rampini and Mr. Justice Pratt.

ANNODA PROSAD GHOSE v. RAJENDRA KUMAR GHOSE.*
[13th December, 1901.]

Revenue Sale Law (Act XI of 1859) s. 54—Meaning of the words "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners."

The words, "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners" in s. 54 of Act XI of 1859, mean that the purchaser shall not acquire any rights not possessed by the previous owner or owners at some time or another, and [224] shall acquire no more than what was the property of the previous owner or owners; they do not mean any right not possessed by the previous owner or owners at the date of the sale.

THE plaintiffs, Annoda Prosad Ghose and another, appealed to the High Court.

This appeal arose out of an action brought by the plaintiff to recover possession of certain property on declaration of title thereto. The allegation of the plaintiff was that the several proprietors of the estate No. 86 of the Khulna Collectorate had opened separate accounts in respect of their shares, and Jadav Chandra Ghose, Hara Mohun Ghose and Gungadhar Ghose were recorded proprietors of the said estate in respect of which an account No. 1 was opened, that he, the plaintiff, purchased in August 1894; the share of Jadav Chandra Ghose in Mouza Karandi appertaining to that estate at a sale held in execution of a money decree against the heirs of the said Jadav Chandra Ghose; that the share of the estate No. 86 comprising the account No. 1 was sold in December 1894 for arrears of Government revenue and was purchased by one Rup Lal Nag, from whom the defendants purchased that share; that the defendants thereupon had applied for registration of their names under the Land Registration Act, but that the plaintiff objected to it; that the objection having been disallowed, the names of the defendants were registered, and hence the present suit was brought. The defence *inter alia* was that the

* Appeal from Appellate Decree No. 815 of 1900, against the decree of Babu Debendra Lal Shome, Subordinate Judge of Khulna, dated the 20th of March 1900, affirming the decree of Babu Manmohan Nогоl, Munsiff of Bagirhat, dated the 5th of August 1899.

(1) (1894) 9 C. W. N. 604.

plaintiff lost his title to the disputed property by the revenue sale and as such he was not entitled to a decree. The Court of First Instance dismissed the plaintiff's suit. On appeal to the Subordinate Judge, the decision of the First Court was confirmed.

Babu *Jogesh Chandra Roy* for the appellant.

Dr. *Ashutosh Mookerjee* and Babu *Jonanendra Nath Bose* for the respondent.

RAMPINI AND PRATT, JJ.—The suit out of which this appeal arises was brought by the plaintiff to obtain a declaration of title to and recover possession of a 6 gunda 2 kara 2 krant share in a certain revenue estate. The plaintiff alleged that he had purchased the share of one Jadav Chandra Ghose on the [225] 22nd of August 1894 at a sale in execution of a decree obtained against the heirs of Jadav Chandra Ghose. The sale was confirmed by the Civil Court on the 24th September of the same year. Subsequently, on the 30th December 1894, the share of Jadav Chandra Ghose in the estate was purchased by one Rup Lall Nag at a sale for arrears of revenue; and Rup Lall Nag is the defendant in this case against whom the plaintiff seeks possession.

The Lower Courts have found that the share of Jadav Chandra Ghose was registered in the Collectorate Register, and that a separate account had been opened with regard to it. They have held that at the sale for arrears of revenue, on the 31st December 1894, at which Ram Lall Nag purchased, he purchased the share of the estate recorded in the name of Jadav Chandra Ghose, and that, that being so, the plaintiff lost the title to the share which he had acquired by his purchase on the 22nd August 1894.

The Lower Appellate Court has held that the alienation in favour of the plaintiff did not amount to an encumbrance within the meaning of s. 54 of Act XI of 1859, and that the last clause of that section, to the effect that "the purchaser shall acquire the share or shares subject to all incumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners," does not in any way protect the plaintiffs or save his property from passing to Rup Lall Nag at the sale for arrears of revenue.

The plaintiff now appeals against this decision. We are unable to see that the decision of the Subordinate Judge is incorrect. It is perfectly clear that the plaintiff's purchase of the share does not amount to an incumbrance which is protected by s. 54, and it does not appear to us that the last clause of s. 54 in any way protects the plaintiff. The pleader for the appellant says that the words, "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners," mean that the purchaser at a revenue sale shall only acquire the rights possessed by the previous owner or owners, or his or their heirs, at the date of the sale; and that, if that meaning be put upon these words, then the alienation in favour of the plaintiff stands good and the purchaser at the revenue sale of the [226] 31st December 1894 purchased nothing. But we do not think that this meaning can fairly be put upon the above words. The words "at the date of the sale" do not occur in the section. All that the words of the section would seem to us to mean is what they expressly say, that the purchaser shall not acquire any rights not possessed by the previous owner or owners at some time or another, and shall acquire no more than what was the property of the previous owner or owners. They do not

1901
DEC. 18.
—
APPELLATE
CIVIL.
—
29 C. 223.

1901
DEC. 13.
—
APPELLATE
CIVIL.
—
29 C. 223.

mean that, if the previous owner has parted with all his rights before the property is put up for sale for arrears of revenue, the purchaser at such a sale shall acquire nothing. To put such an interpretation upon these words would be to entirely ignore the policy of the revenue law, which is to protect the revenue and make the share, on which the revenue is assessed, available for the arrears of revenue due upon it.

We are fortified in the view we take of this case by a reference to the case of *Gungadeen Misser v. Kheeroo Mundal* (1), the facts of which case are very similar to those of the present one and in which the purchaser of a share of an estate at a private sale was held not entitled to exclusive possession as against a purchaser at a sale for arrears of revenue. In this case it was said: "The sale of the Collector passes to the purchaser the share of the defaulting shareholder of the entire estate, as it was registered in the Collector's book," and again: "It was not the intention, we think, of the legislature to introduce uncertainty of this kind into auction-sales held for the purpose of realising revenue. On the contrary, it is rather the general principle of the legislature to make these sales effective to pass the full share of the defaulting shareholder, free, so to speak, of all incumbrances."

We therefore affirm the decision of the Lower Appellate Court and dismiss the appeal with costs.

Appeal dismissed.

29 C. 227.

[227] *Before Mr. Justice Ameer Ali and Mr. Justice Pratt.*

NARAIN MULLICK v. BADI ROY.* [15th May and 6th June, 1901.]
Ghatwali tenure—Grant of permanent lease by ghatwal—Jungleburi lease—Bengal Tenancy Act (VIII of 1885), s. 5, cl. 5—Presumption of tenure.

In the absence of special circumstances, a ghatwal is, as a general rule, not competent to grant a lease of the tenure in perpetuity, and his successors are not bound to recognise such an incumbrance.

THE plaintiffs, Narain Mullick and others, appealed to the High Court.

The appeal arose out of an action for recovery of possession of some jungle lands, by establishment of title thereto, and for recovery of the value of trees cut away by the defendants. The plaintiffs alleged that the lands in dispute formed part of a permanent jungleburi tenure held by them under two registered pottabs, for over twelve years. It was alleged that the property appertained to the chakran lands of two sets of ghatwals; that the father of some of the plaintiffs took a permanent lease in 1878 of 4 annas of the ghatwali lands from the father of the defendant No. 2, one of the present ghatwals; that some of the other plaintiffs themselves and the father of the remaining plaintiffs took a permanent lease in 1877 of 12 annas of the said lands from one Madhab Roy, one of the present ghatwals and the predecessors of the remaining ghatwals, the entire grant comprising 300 bighas of land; and that the

* Appeal from Appellate Decree No. 1084 of 1899, against the decree of K. N. Roy, Esq., Offg. District Judge of Bankura, dated the 18th March 1899, reversing the decree Babu Khetter Mohun Mitter, Munsif of Bankura, dated the 27th of November 1897.

(1) (1874) 14 B. L. R. 170.