

proof or any such finding, we think it impossible to maintain a conviction under that section. If the Magistrate is of opinion that any disturbance of the public peace is likely to take place, the [218] law confers on him sufficient powers to take steps to prevent the occurrence of such contingency. The law has also given power to the Magistrate to call upon anybody found loitering or wandering in the neighbourhood without any ostensible means of livelihood to enter into a bond for good behaviour, but we do not think that, with the object merely of preventing an apprehended breach of the peace, persons from whom disturbance is apprehended ought to be convicted under ss. 150 and 157 without proof of the particular facts, which the sections contemplate as necessary to be established in order to uphold a conviction thereunder. We accordingly make the Rule absolute and set aside the conviction and sentence of Ram Lochan Sarcar. The order requiring him to give security must fail with the setting aside of his conviction.

With regard to the application of Mohim Chandra Dutt we have already mentioned the circumstances which gave rise to the proceedings against him. He has been convicted not under s. 157 but only under s. 150, which, as already pointed out, contemplates a particular unlawful assembly. There is no finding in the judgment of the Joint Magistrate such as would warrant his conviction under that section. We think, therefore, that his conviction must also be set aside as also the order requiring him to enter into a bond. The observations we have made regarding other steps being open to the Magistrate to insure the maintenance of the public peace in that locality apply also to this case.

Rule made absolute.

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[219] APPELLATE CIVIL.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and
Mr. Justice Banerjee.*

NARAIN UDDIN v. SRIMANTA GHOSE AND OTHERS.* [23rd August, 1901.]
Bengal Tenancy Act (VIII of 1885), ss. 65 and 188—Sale of a tenure—Co-Landlord's Decree—Execution.

The sale of a tenure in execution of a decree for rent obtained by certain persons, who do not constitute the entire body of landlords at the date of the suit and of the decree, and who are not the entire body of landlords at the date at which part of the claim for which the rent suit was brought, accrued due, would not pass the entire tenure, but only the right, title and interest of the judgment-debtors in the tenure at the date of the sale.

THE plaintiff Narain Uddin appealed to the High Court.

This appeal arose out of an action brought by the plaintiff for recovery of possession of certain immoveable property on declaration of title thereto. The plaintiff's allegation was that the disputed land, which was a ganti jama, originally belonged to defendant No. 3, and that in execution of a rent decree against him by the entire body of landlords the said jama was sold and purchased by himself the plaintiff; that after having obtained possession of the jama he sublet it to defendant

* Appeal from Appellate Decree No. 2160 of 1899, against the decree of Babu Karuna Das Bose, Subordinate Judge of 24-Pergunnas, dated the 29th of May 1899, modifying the decree of Babu Purbha Chunder Singha, Munsif of Basirhat, dated the 25th of February 1898.

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No. 3 in durgatin ; that he then obtained a rent decree against defendant No. 3, and in execution of that sold the dur-ganti and purchased it himself ; that the defendants Nos. 1 and 2 in collusion with other defendants had brought some cases under s. 9 of the Specific Relief Act against the plaintiff's tenants through the defendants Nos. 4 to 9, in which they were successful and hence the suit [220] was brought. The defendants *inter alia* pleaded that the plaintiff did not purchase in execution of a rent decree obtained by the entire body of landlords, but that the plaintiff had merely purchased the right, title and interest of the defendant No. 3. The Court of First Instance, having held that the plaintiff purchased only the right, title and interest of the tenure, gave a decree for declaration of title, but disallowed the claim for khas possession. The learned Munsif observed as follows :—

“ The plaintiff in the plaint has stated that the execution of the rent decree in which he had made his purchase, was at the instance of the full 16 annas landlord. This is not true. Ex. D is the copy of the plaint in that case, and Ex. 3 is the copy of the decree from which we find that the 16 annas landlords of the tenure at the time of the institution of the case did not join in the suit, nor in the execution case. The persons who sued were originally the full owners, but a 1 anna and 12 gundas share of the property was purchased by a third person named Krishna Nath Bandopadhyaya. He did not join in the suit, but his share of rent for the years 1295 and 1296 B. S. has been excluded from the claim in the case, so that when the decree was passed it was not in favour of the 16 annas landlords. In the execution case also the sale was similarly not at the instance of the 16 annas landlord, but of a fractional share of the same. Such being the case the tenure did not pass to the purchaser (plaintiff), but only the right, title, and interest of the judgment-debtors in the case ”

On appeal to the learned Subordinate Judge of 24-Pergunnas, Babu Karuna Das Bose, he affirmed the decision of the First Court.

Dr. Ashutosh Mookerjee and Babu Sarat Chunder Ghose for the appellants.

Babu Sarat Chunder Roy Chowdhry for the respondents.

MACLEAN, C. J. In my opinion the view taken by both the Courts below is correct. I read the words “ his tenure or holding shall be liable to sale in execution of a decree for the rent thereof,” in s. 65 of the Bengal Tenancy Act as pre-supposing a suit and a decree under the Act, that is, a decree made in a suit in which all the landlord co-sharers are plaintiffs and not merely some of them, that is fractional co-sharers. This view gains support from s. 188 of the Act. Here the claim is for the rent of four years of which the rent [221] of the first two years was properly due and payable to the plaintiffs as the 16 annas landlords, but as regards the last two years' rent the plaintiffs were fractional landlords only. At the date of the institution of the suit, the plaintiffs were fractional co-sharers only.

We are invited to split up the decree and to say that, as regards the first two years' rent, it was a decree at the instance of all the landlords and therefore one in which the tenure could be sold. But this is not the decree ; it is a decree for the rent of all the four years and made in a suit in which all the co-sharer landlords are not plaintiffs. The fractional co-sharer landlords have no right to sell the tenure for the rent due for the the last two years, and we cannot split up the decree in the manner suggested by the appellants. We can only look at the decree as a whole, and similarly at the suit in which it was made. The appeal fails and must be dismissed with costs.

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BANERJEE, J.—I am of the same opinion. The question raised in this case may be shortly stated thus:—Whether the sale of a tenure in execution of a decree for rent obtained by certain persons, who did not constitute the entire body of landlords at the date of the suit and of the decree and who were not the entire body of landlords also at the date at which part of the claim for which the rent suit was brought accrued due, would pass the entire tenure, or merely the right, title and interest of the judgment-debtors in the tenure at the date of the sale.

The Court of Appeal below has held that the sale would pass only the right, title and interest of the judgment-debtors at the date of the sale, and the contention on behalf of the plaintiff appellant is that this decision is wrong, because although the decree-holders did not constitute the entire body of landlords at the date of the suit and of the decree, and although a part of the claim for rent was for rent that accrued due after they had ceased to constitute the entire body of landlords, yet, when a part of the claim was for rent that accrued due to them as forming the entire body of landlords before a portion of [222] their interest in the superior tenure or estate had passed to others, so far as that portion of the claim went, it constituted a first charge on the tenure under s. 65 of the Bengal Tenancy Act, and a sale of the tenure in satisfaction of that part of the claim could be obtained under that Act. No authority is cited in support of this contention, but it is argued that, if a part of the claim for rent constitute a first charge on the tenure, no subsequent transfer of the landlords' interest in part or in whole can extinguish or affect such charge and the landlord would be entitled to enforce it by sale of the tenure.

I am unable to accept this argument as sound. S. 65 of the Bengal Tenancy Act no doubt says that the rent shall be a first charge on the tenure, but it says that in connection with another rule which is enacted in these words, namely that "the tenure or holding shall be liable to sale in execution of a decree for the rent thereof"; and that means a decree for rent under, or in accordance with the Act.

Now s. 188 of the Act requires that when two or more persons are joint landlords, anything which the landlord is, under the Act, required or authorised to do, must be done by both or all of those persons acting together, or by an agent authorised to act on behalf of both or all of them; and it has been held in a series of cases of which I need only notice *Beni Madhub Roy v. Jaod Ali Sircar* (1) which was decided by a full Bench, that the special provisions of the Bengal Tenancy Act, with reference to rent decrees and sales of tenures in execution of such decrees, apply only to decrees obtained in accordance with s. 188 of the Act.

In the present case, the decree was not obtained in accordance with the provisions of the last-mentioned section. It was argued that, although the entire decree might not have been so obtained, the part of the decree, which related to so much of the claim, as had accrued due to the decree-holders, when they formed the entire body of landlords, may be taken as having been obtained in accordance with s. 188 of the Tenancy Act.

[223] There are two answers to this argument. In the first place, the decree cannot be split up into two parts in this manner. The sale that took place was in execution of the decree taken as a whole, and, if it was bad as regards part of the decree, as it is impossible to divide the

(1) (1890) I. L. R. 17 Cal. 890.

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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.