

32 C. 1031 (=9 C. W. N. 824.)

[1031] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Pargiter.

SURENDRA NARAIN SINGH v. GOPI SUNDARI DASÍ.*

[30th March and 7th April, 1905.]

Civil Procedure Code (Act XIV of 1882), s. 244—Judgment-debtor, "representative" of—Putni—Unregistered purchaser—Execution—Application to set aside a sale in execution of a subsequent rent decree against the putnidar.

A person, who has purchased a putni holding at a sale in execution of a money decree, but has not had his name registered in the landlord's *sherista*, is bound by a subsequent decree for arrears of rent obtained by the landlord against the registered putnidar and by the sale in execution of such decree, and is therefore a "representative" of the judgment-debtor within the meaning of s. 244 of the Civil Procedure Code.

Ishan Chandar Sirkar v. Beni Madhub Sirkar (1) and *Azgar Ali v. Asabod din Kazi* (2) followed. *Umed Rasul Saha v. Anath Bundhu Chowdhry* (3) distinguished. *Kameshwar Pershad v. Run Bahadur Singh* (4) not followed.

[Ref. 11 C. W. N. 168=5 C. L. J. 80; 1 S. L. R. 158; 2 C. L. J. 369.]

SECOND APPEAL by Surendra Narain Singh and another.

The appellants were the purchasers of a putni holding, called Khalasi Madhupur, at a sale in execution of a money decree against the putnidar held on the 20th April 1900, and had obtained possession thereof on the 11th March 1901. They did not however, register their names as purchasers of the mauza in the landlord's *sherista*; the putnidar still remaining on the record as the registered tenant. Subsequently the respondent, Gopi Sundari Dasi, brought a rent suit No. 270 of 1901 against the putnidar, obtained a decree, and in execution thereof brought the putni to sale and purchased it herself on the 18th December 1901.

[1032] The delivery of possession to her having been resisted by the appellants, she instituted proceedings under s. 335 of the Civil Procedure Code, before the Second Munsiff of Pubna, who held that the appellants had bought the property some time after the arrears of rent on the part of the putnidar had accrued, but had not obtained a mutation of their names in the *sherista*, that the sale in execution of the rent decree passed the tenure itself, and that the appellants, who stood in the position of the judgment debtors, were bound by the decree and the sale. He, accordingly, by his order dated the 20th December 1902, directed the respondent to be put in possession, and prohibited the opposite party from offering any resistance or obstruction to her obtaining possession.

The appellants thereafter filed an application to set aside the sale in execution of the rent decree on the ground that the sale processes had been intentionally and fraudulently suppressed. Upon a preliminary objection being taken as to the *locus standi* of the applicants, the Munsiff decided, on the 6th February 1904, that the applicants were bound by the rent decree and the sale which passed their interest, as they had not registered their names, and that they were, therefore, representatives of the judgment-debtor within s. 244 of the Civil Procedure Code. He, however, heard and rejected the application on the merits on the 5th March. On appeal

* Appeal from order No. 24 of 1905, against the order of M. Yusuf, District Judge of Pubna, dated 19th November 1904, affirming the order of Debendra Mohun Sen, Second Munsiff of Pubna, dated 5th March 1904.

(1) (1896) 1. L. R. 24 Cal. 62.

(2) (1904) 9 C. W. N. 134.

(3) (1901) 6 C. W. N. 128.

(4) (1886) 1. L. R. 12 Cal. 453.

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the District Judge of Pubna was of opinion that the appellants were not the representatives of the judgment-debtor within s. 244, as they had purchased the latter's interest in the tenure prior to the rent decree.

He dismissed the appeal, on the 19th April 1904, on this preliminary ground.

The appellants then filed the present appeal in the High Court.

Babu *Shama Charan Roy* for the appellants.

Babu *Nilmadhub Bose* and Babu *Prosono Gopal Roy* for the respondents.

GHOSE AND PARGITER JJ. This appeal arises out of an application made by the appellant before us to set aside a sale in execution of a rent decree under section 244 of the Civil Procedure Code.

[1033] The property sold is a putni, and the appellant bought it in execution of a money decree obtained against the putnidar, judgment-debtor; but he did not obtain the registration of his name in the zemindar's *sherista*, the result being that the zemindar brought a suit for rent against the original putnidar, the recorded tenant, and recovered judgment and, in execution, caused the property to be sold and himself purchased it.

The question was raised in the Courts below whether the appellant was a representative of the sold-up putnidar, within the meaning of section 244 of the Civil Procedure Code, so as to entitle him to apply under that section to set aside the sale in question. The Court of First Instance held that he was such representative; but the appellate Court has held otherwise and, without going into any other question raised between the parties, has dismissed the application; and hence this appeal by the petitioner.

It would appear that after the sale in execution of the rent decree a dispute arose between the auction-purchaser and the appellant in respect to the possession of the land sold, and there was a proceeding under section 335 of the Code of Civil Procedure between them; but this ended with an order adverse to the appellant upon the ground that he stood in the shoes of the judgment-debtor, and was bound by the sale in execution of the decree for rent. He then applied under section 244 of the Code to have the sale set aside; and the question was raised, as already indicated, whether he was a representative within the meaning of the section.

It appears to us that the principle laid down by a Full Bench of this Court in the case of *Ishan Chunder Sirkar v. Beni Madhub Sirkar* (1) is applicable to this case. There it was laid down that the term "representative," as used in section 244, when taken with reference to the judgment-debtor, does not mean only his legal representative, that is, his heir, executor or administrator, but it means his representative in interest and includes a purchaser of his interest who, so far as such interest is concerned, is bound by the decree; and that it does not exclude from its [1034] signification an execution-purchaser of the judgment-debtor's interest. In the present case, the petitioner, who has purchased the judgment-debtor's interest at an execution sale prior to the decree for rent obtained by the landlord, is bound by that decree and the sale which took place in execution thereof, and as such is a representative of the judgment-debtor within the meaning of section 244, as expounded by the Full Bench. As explained in the case of *Azgar Ali v. Asaboddin Kazi*, (2) "the essential criterion is, not the point of time at which he acquired his interest, but the nature of the decree and the nature of his purchase. If, as purchaser, he is bound by the decree and consequently affected by the sale, he must be

(1) (1896) I. L. R. 24 Cal. 62.

(2) (1904) 9 C. W. N. 134.

regarded as the representative." And, as further explained by Banerji J. in the Full Bench case, already referred to, the execution proceeding is really against the petitioner "though nominally against the judgment-debtor on the record," and it would be a manifest hardship if he were not permitted to come in and show, if he could, that the decree was barred or satisfied, or that, for any other reason, the execution could not proceed, or that the sale was vitiated by fraud. Indeed, if he be not permitted to come in under section 244 of the Code, it is difficult to conceive what other remedy may be open to him; and, as already mentioned, in the proceeding held under section 335 of the Code, it was held between these very parties that the petitioner stood in the shoes of the judgment-debtor, and an order was made against him under that section upon that ground.*

We observe that the lower appellate Court, in the decision it arrived at, proceeded upon the case of *Umed Rasul Saha v. Anath Bundhu Chowdry* (1); but that case and the other cases bearing upon the point were considered, explained and distinguished by this Court in the recent case of *Azgar Ali v. Asaboddin Kazi* (2) to which we have already referred. And it was therein laid down, in circumstances very similar to those which exist in the present case, that a person, who had acquired the holding under a purchase from the registered tenant, but who had not got his name registered in the landlord's office, was bound by the decree for rent obtained against the recorded [1035] tenant, and was, therefore, a representative within the meaning of section 244 of the Code.

Our attention has, however, been called by the learned vakil for the respondent to the case of *Kameshwar Pershad v. Eun Bahadur Singh* (3). That case, no doubt, would seem to lay down a principle favouring the respondent, but we must be guided by the principle laid down by the later Full Bench case of *Ishan Chunder Sirkar v. Beni Madub Sirkar* (4) to which we have already referred.

Upon these grounds we hold that the order of the Court below is erroneous, that it should be set aside, and the case remanded to that Court for investigation into the matter of the petition presented by the appellant. Costs to abide the result.

Case remanded.

32 C. 1036 (=1 C. L. J. 421.)

[1036] APPELLATE CIVIL.

Before Mr. Justice Ghose, Mr. Justice Rampini and Mr. Justice Brett.

GOURI KRISHNA v. SABANUNDA SARMA.*

[5th May, 1905.]

Jurisdiction—Partition of portion of revenue-paying estate in Assam—Imperfect partition—Assam Land and Revenue Regulation (I of 1886), ss. 96, 154.

The expression "imperfect partition," as defined in s. 96 of the Assam Land and Revenue Regulation, is referable to a division of the *entire* estate, and not of a portion of the estate.

A suit for the partition of certain specific plots of land situated within a revenue-paying estate in Assam, the plaintiff having no joint interest in the other

* Appeal from Appellate Decree No. 2581 of 1903, against the decree of Kali Prasanna Roy, Subordinate Judge of Sylhet, dated the 22nd July 1903, affirming the decree of Girish Chunder Sen, Munsif of Moulvi Bazar, dated 30th of July 1902.

(1) (1901) 6 C. W. N. 128.
(2) (1904) 9 C. W. N. 134.

(3) (1886) I. L. R. 12 Cal. 458.
(4) (1896) I. L. R. 24 Cal. 62.