

Before Mr. Justice Norman and Mr. Justice E. Jackson.

HARASUNDARI DASÍ (PLAINTIFF) v. KISTU MANI CHOWDHRAIN
AND OTHERS (DEFENDANTS).*

March 7.
1870

Act VIII of 1865 (B. C.), s. 16—Shareholder—Purchaser of Rights of Holder of Fractional Share.

Section 16 of Act VIII of 1865 (B. C.) (1) does not apply to the purchaser of the rights and interests of the holder of a fractional share in an under-tenure.

Baboo *Rames Chandra Mitter* for appellant.

Baboo *Kali Mohan Das* for respondents.

NORMAN, J.—The facts of this case, as I understand them are as follows :—
Shib Chandra Roy, Nidan Chandra Roy, and Ram Chandra Roy were possessed of a certain mehal No. 88, consisting of Mauzas Agyhatta and Roondhan, under a title which the first Court finds to be as patnidar, and the lower Appellate Court apparently treats as a maurasi talookdar.

A katkabila of one-third of this property was granted to one Jadubindr who obtained a decree after foreclosure and got possession.

Two-thirds of the mehal in question were sub-let by Shib Chandra and Nidan Chandra to Kamal Lochan Nandi in patni.

In execution of a decree against Kamal Lochan, one-fourth of his tenure was sold to Kalikant Lahori, and three-fourths were sold to Chandra Nath and Haranath, who were thus in possession of three-fourths of two-thirds, equal to one-half or eight annas of the mauza in dispute. Chandra Nath's share, four annas, was purchased by the plaintiff on the 30th of Asar 1254 (13th July 1847).

* Special Appeal, No. 2792 of 1868, from a decree of the Subordinate Judge of Pubna, dated the 8th August 1868, affirming a decree of the Officiating Sudder Ameen of that district, dated the 20th March 1868.

(1) *Act VIII of 1865 (B. C.), s. 16*—“The purchaser of an under-tenure sold under this Act shall acquire it free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees. Provided that nothing herein contained shall be held to entitle the purchaser to eject khudkast ryots, or resident and hereditary cultivators, nor to cancel *bond fide* engagements made with such class of ryots or cultivators aforesaid by the late incumbent of the under-tenure or his representatives, except it be proved, in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor. Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof through whose default the tenure was brought to sale.”

1870
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 DASI
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The plaintiff was dispossessed by the defendant, Kistu Mani Chowdhraïn, on the 20th of November 1866. The defendant's supposed title to possession is as follows :—

Shib Chandra Dutt and others, the zemindars, having obtained a decree for rent against Nidan Chandra, the right, title, and interest of Nidan Chandra, viz., 5 annas, 6 gandas, 2 cowries, and 2 krants, in the property in dispute was sold in execution of the decree, and purchased by the defendant, Kistu Mani. The sale purports to have been made under Act VIII of 1865 (B. C.).

The Subordinate Judge finds that, on the application of the decree-holder, a prayer was made for the sale of the right and interest of Nidan Chandra Roy in the property in dispute, and that the sale certificate expressly records that such right and interest were sold. And it has been shown to us, by reference to the proceedings and to the sale certificate, that this finding is correct. The Subordinate Judge however, refers to section 16 of Act VIII of 1865 (B. C.) (*reads*). He says that there was no proof that permission was given to Nidan Chandra and others to grant the land in patni to the person under whom the plaintiff claims, viz., Kamal Lochan; and therefore he assumes that the defendant, Kistu Mani, purchased the property free from all incumbrances, and, affirming the judgment of the first Court, dismisses the plaintiff's suit. The Subordinate Judge says that no distinction is made in section 16 of Act VIII of 1865 between the purchaser of the whole and a part of the mehal.

The reason is simply this :—that the section in question makes no mention whatever, and appears therefore not to apply to sales of portions of tenures.

The purchaser of a portion or fractional share in an under-tenure is not the purchaser of the under-tenure any more than the purchaser of a house in a village is purchaser of the village. The Subordinate Judge's mistake is the more remarkable, because the Collector had, in express terms, sold only the rights and interests of Nidan Chandra in the under-tenure. We think that, by the sale of the right and interest of Nidan Chandra, the purchaser, Kistu Mani Chowdhraïn, acquired only such rights as Nidan Chandra possessed at the time of the sale, and that therefore she took, subject to the rights of the persons now interested, under the patni granted by him to Kamal Lochan.

The result will be that the appeal must be decreed, and the decision of the lower Appellate Court reversed with costs, both in this Court and in the lower Appellate Court.

The case must be remanded to the lower Appellate Court for trial of the remaining issues.