

1871

MEAH JAN
MUNSHI
v.
KURRUNA-
MAYI DEBI.

A sale under Act X of 1859, section 105, for arrears of rent passed the tenure, which view was supported by Act VIII of 1865, B. C., which gives a purchaser in a sale under section 105 of Act X the right of avoiding all under-tenures created by the defaulting holder of the estate; *Fatima Khatun v. The Collector of Tipperah* (1). The case of *Pran Bandhu Sirkar v. Sarba*

(1) Before Mr. Justice E. Jackson and
Mr. Justice Miller.

The 4th May 1870.

FATIMA KHATUN AND ANOTHER (DE-
FENDANTS) v. THE COLLECTOR OF
TIPPERAH, REPRESENTING THE COURT
OF WARDS ON BEHALF OF SYUD BHIA-
RAT ALI, MINOR (PLAINTIFF).*

Mr. C. Gregory and Baboo Kashi
Kant Sein for the appellants.

Baboo Anukul Chandra Mookerjee for
the respondent.

MITTER, J.—This was a suit instituted
by the plaintiff for the declaration of his
right in a certain shikmi tenure by the re-
versal of a sale of that tenure held in
execution of a decree for arrears of rent.

It appears that the plaintiff purchased
the right, title, and interest of one Har
Kumar in the tenure in question on the
28th of September 1866.

Previous to that date the zemindar
defendant had brought a suit against one
Gaur Mani, whose name was registered
in his book as tenant, for arrears of rent
due on account of that tenure, and a decree
was passed in his favour in April 1865.
In execution of this decree, the tenure in
question was sold to the defendant, spe-
cial appellant, on the 29th of April 1867,
and the plaintiff contends that inasmuch
as the tenure in question was the pro-
perty of Har Kumar, and not of Gaur
Mani, he the plaintiff is entitled to obtain
the declaration which he has asked for
in this suit.

The first Court dismissed his suit on
the ground that he had failed to prove

that the disputed tenure belonged to Har
Kumar whose rights and interests he
had purchased in execution of a decree.

On appeal that decision has been re-
versed by the Subordinate Judge for
the reasons given in his judgment. I
am of opinion that the decision of
the Subordinate Judge must be re-
versed as the reasons upon which it is
based are not such as can be supported.
He says:—"It is not denied that the
" Shikmi talook originally belonged to
" Har Kumar's father, the late Bango
" Chandra; therefore according to Hin-
" du law it belonged to Har Kumar on
" the death of his father, and not to Har
" Kumar's mother Gaur Mani, and the
" shikmi talook being a transferable
" tenure was sold on the 28th September
" 1866 to plaintiff in satisfaction of a
" decree against Har Kumar." There is
nothing on the record to show that the
defendants did at any time during the
trial of this suit admit that the property
in dispute was the property of Har
Kumar's father; and in the absence
of such admission by the defendants,
it was the duty of the plaintiff to prove
his case. The Subordinate Judge was
therefore wrong in assuming that the
property belonged to Har Kumar's father
and his conclusion that it was the pro-
perty of Har Kumar must necessarily fall
to the ground.

Irrespective of this point, however, it
appears to me that the judgment of the
Subordinate Judge cannot be supported.
He has found as a fact that the arrears
sued for by the zemindar defendant were
actually due to him; and he has also

* Special Appeal, No. 133 of 1870, from a decree of the Judge of Tipperah, dated the 30th September 1869 reversing a decree of the Moonsiff of that district, dated the 23rd December 1868.

1871

MEAH JAN
MUNSHI
v.
KURRUNA-
MAYI DEEL

Sundari Debi (1), did not take into consideration the effect of Act VIII of 1865 (B. C.), and is opposed to the current of decisions on this point. Lastly, the zemindar was not bound to recognize the plaintiff who had for such length of time neglected to register her name in his books as tenant. The rent receipts had all been granted in the name of the old proprietor, so that the payment by the plaintiff (even if admitted) in the name of the old tenant, and the receipt of it by the zemindar as such, could be no recognition by him of the plaintiff's tenancy.

found that Gaur Mani was the person whose name was registered as tenant in the zemindar's books. Under these circumstances, if Har Kumar allowed his mother Gaur Mani to have her name registered in the zemindar's books the zemindar was right in bringing his suit for arrears of rent against Gaur Mani, who was the registered tenant, and as the arrears were actually due and the suit was *bonâ fide*, the sale under the decree is valid and binding as against the plaintiff. The defendant has not purchased the right, title, and interest of Gaur Mani in the tenure, but he is the purchaser of the tenure itself at a sale held under Act VIII of 1865, B. C. It is therefore clear that the judgment of the Subordinate Judge is erroneous on this ground also.

I would reverse the decision of the Subordinate Judge and restore that of the Court of first instance with all costs.

JACKSON, J.—I am also of the same opinion. The admitted facts of the case are briefly these. Gaur Mani was the registered tenant of a certain tenure. The zemindar brought a suit against the registered tenant for arrears of rent; he got a decree and sold the tenure in execu-

tion of that decree, and the defendant purchased it.

The plaintiff states that subsequent to the passing of the decree and prior to the sale he has purchased the tenure as the right, title, and interest of one Har Kumar. The plaintiff does not show how it happens that if the tenure belonged to Har Kumar, the name of Gaur Mani was registered in the place of that of Har Kumar. Gaur Mani is the mother of Har Kumar, and therefore it may be supposed that during his minority, for it appears that Har Kumar has only lately attained majority, her name was registered in the zemindar's books. Whether that is so or not as the name of Har Kumar was not registered and Gaur Mani was entered as the registered tenant, the zemindar was quite right in suing Gaur Mani. Har Kumar could have paid the arrears of rent, or the plaintiff, purchaser from Har Kumar, could have done so, and could thus have saved the property from sale. But as they did not do so, and as the suit for arrears of rent was *bonâ fide*, the plaintiff's rights in the property now, whatever they may have been heretofore, are nothing.

The decision of the lower Appellate Court must be reversed and the plaintiff's suit must be dismissed with all costs.

1871

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Upendra Mohan Tagore v. Thanda Dasi (1), and Sadhan Chandra Bose v. Guru Charan Bose (2).

(1) 3 B. L. R., A. C., 349.

(2) *Before Mr. Justice Loch and Mr. Justice Mookerjee.**The 1st February 1871.*

SADHANCHANDRA BOSE (PLAINTIFF)
v. GURU CHARAN BOSE AND OTHERS
(DEFENDANTS.)*

Baboos *Srinath Das* and *Bangsidhar Sein* for the appellant.

Baboo *Grija Sankar Mazumdar* for the respondents.

LOCH, J.—We think that the judgment of the lower appellate Court must be set aside. That judgment is mainly based on the ground that in obtaining a decree under Act X of 1859, there was collusion between the patnidar and the plaintiff and others; and having laid that down as the foundation of the judgment, the Subordinate Judge goes on to declare that the sale is also collusive, and he reverses the judgment of the first Court.

It appears that the tenure in question was originally held by one Anup Sirkar, and his name was recorded in the zemindar's books. After his death, his widow, Paresh Mani, continued to pay the rents; but one Nimanand claimed a share in the estates as being the grandson of Ram Chandra, the cousin of the said Anup Sirkar. He brought a suit against Paresh Mani, which was compromised, Paresh Mani taking 9 annas and Nimanand 7 annas; and after his death, his mother Bhairabi succeeded as his heir.

Anup Sirkar left, besides his widow Paresh Mani, two sons, Bani Madhab and Prasanna Kumar. Prasanna Kumar died without leaving any children, and was succeeded by his mother Paresh Mani, and when Beni Madhab came of age, he brought a suit to set aside the arrangement between Paresh Mani and Nimanand; but he failed, and his suit was dismissed in 1863.

Subsequently, in 1867, the Patnidar brought a suit for arrears of rent of the tenure against Beni Madhab and Paresh Mani, and obtained a decree on the 18th of January 1867. He subsequently, as is stated to us, gave a dur-patni of this tenure to one Ram Gopal, and made over the unexecuted decrees which he held against tenants to the said Ram Gopal to enable him to recover the arrears of rent. It is said on the other side that he did not make over but sold that decree to Ram Gopal. But this is of very little consequence on the present question—Ram Gopal executed the decree, brought the tenure to sale, purchased it himself, and then sold it to the plaintiff, who in attempting to get possession was ousted by the defendant Guru Charan who held a pottah under the said Bhairabi.

The Subordinate Judge considers the collusion of the patnidar with other parties proved by the fact that in the suit brought by Beni Madhab in 1863, to set aside the *ruffanama* entered into by his mother with Nimanand, the patnidar was made a *pro farmd* defendant; and he concludes that he must therefore have been aware that Bhairabi was admitted to be the owner of 7-annas of the tenure, and knowing this he was bound to make her a party in the suit for arrears of rent which he brought against Beni Madhab and Paresh Mani.

* Special Appeal, No. 1633 of 1870, from a decree of the Subordinate Judge of Jessore, dated the 25th May 1870, reversing a decree of the Moonsiff of that district, dated the 26th January 1870.