

1891
 CHANDRA-
 BATI KOERI
 v.
 HARRING-
 TON.

In the special circumstances of this case their Lordships are of opinion that the appellants should have the costs of this appeal.

Appeal allowed; suit remanded.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

Solicitors for the respondent: Messrs. *Sanderson, Holland & Adkin.*

C. B.

FULL BENCH REFERENCE.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot, Mr. Justice O'Kinealy, Mr. Justice Macpherson, and Mr. Justice Ghose.

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 March 17.

MAHOMED ABBAS MONDUL (DEFENDANT) v. BROJO
 SUNDARI DEBIA (PLAINTIFF).*

Bengal Tenancy Act (VIII of 1885), ss. 13, 195, cl. (e)—Sale in execution of decree—Dur-putni tenures.

Section 13 of the Bengal Tenancy Act applies to sales of *dur-putni* tenures in execution of decrees.

REFERENCE to a Full Bench made by TREVELYAN and BEVERLEY, JJ. The referring order was as follows:—

“The plaintiff is the owner of a *putni*. He brought this suit for arrears of rent against the first three defendants, who were *dur-putnidars* under him. Their defence was that their tenure had been sold in execution of a decree and had been bought by one Amirunnessa. Amirunnessa has been added as a defendant.

“The Munsiff gave a decree against Amirunnessa alone.

“On appeal this decree was set aside, and in the place of it a decree has been made against the first three defendants, who have appealed to this Court, but have not made Amirunnessa a party to the appeal. Amirunnessa's purchase was not registered in the books of the plaintiff. It has been contended before us by the pleader for the appellants that Amirunnessa alone is liable, and that the plaintiff is bound to recognise her.

* Full Bench reference in appeal from appellate decree No. 273 of 1889, against the decision of the District Judge of Rajshahye, dated 23rd February 1889, reversing the decree of the Sudder Munsiff of that district, dated the 16th November 1888.

“The case of *Kristo Bulluw Ghose v. Kristo Lall Singh* (1), decided by a Division Bench of this Court, supports the view put forward on behalf of the appellants, that decision being based on the provisions of the Bengal Tenancy Act; but in a subsequent case decided by the same Bench, *Gyanada Kantho Roy v. Bromomoyi Dassi* (2), it was held that the provisions of that Act do not apply to *putni* tenures. In the present case the question relates to a *dur-putni* tenure; but having regard to the observations of the Lords of the Privy Council in the case of *Lucki Narain Mitter v. Khettro Pal Singh Roy* (3), and to the provisions of Regulation VIII of 1819, sections 4, 5 and 6, we are inclined to hold that section 195 (e) of the Bengal Tenancy Act bars the operation of the Bengal Tenancy Act in the case of *dur-putni* tenures also, and that the decision in *Kristo Bulluw Ghose v. Kristo Lall Singh* (1) was wrong. The question which we refer to the Full Bench, therefore, is whether section 13 of the Bengal Tenancy Act applies to sales of *dur-putni* tenures in execution of decrees.

“If the section does so apply, the appellants are, in our opinion, entitled to have the suit dismissed as against them with costs. Should the answer be in the negative, the appeal should, in our opinion, be dismissed with costs.”

Baboo *Troyluckhonath Mitter* (with Baboo *Rash Behary Ghose*) for the appellant, contended that section 195, clause (e), only applies to *putnis* properly so called, and does not include *dur-putni* tenures, and that section 13 applies to all kinds of permanent tenures except *putnis*, and therefore applies to sales of *dur-putni* tenures in execution of decrees. The Act was intended to lay down the whole law with regard to the transfer of permanent tenures with the exception of *putni* tenures. “*Putni*” has a well-known specific meaning in the Bengal Code, and is defined in Regulation VIII of 1819 as an estate held immediately under the zemindar. Here the tenure has been sold in execution of a decree against the *dur-putnidar*, and the rent sued for is for a period subsequent to the date of the sale. It is submitted that the defendant's liability ceases upon the sale taking place, and when the purchaser has

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(1) I. L. R., 16 Calc., 642.

(2) I. L. R., 17 Calc., 162.

(3) 13 B. L. R., 146; 20 W. R., 380.

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moreover taken possession. There is no real conflict between the cases mentioned in the referring order. The question should be answered in the affirmative, and the suit dismissed.

Baboo *Mohini Mohun Roy* (with him Baboo *Lal Mohun Das* and Baboo *Mokund Nath Roy*) for the respondent :—There is no conflict between the two cases in the Indian Law Reports; in the case of *Kristo Bulluv Ghose v. Kristo Lall Singh* (1) the point was not raised. The effect of dismissing the suit will be to work injustice; the rent will be lost. Until the landlord receives the fee, he is entitled to refuse to recognize the purchaser—*Lucki Narain Mitter v. Khettro Pal Singh Roy* (2). In the preamble to Regulation VIII of 1819 two classes of tenures are recognized; and if sections 5, 6 and 7 of the Regulation apply to transfer of *dur-putni* tenures, I shall show that we come within section 195 (e) of the Bengal Tenancy Act. The distinction which the preamble makes between a zemindar and a *putnidar* is that the zemindar having to pay Government revenue, the privilege of holding half-yearly sales is accorded to him. Sections 1, 3, 4, 6, 7, 11, 12 and 17 apply to *putni* and *dur-putni* and *sepatni* tenures equally; and the special sections which apply to zemindars, who can bring to sale every half-year, are sections 8, 9, 10, 13, 14 and 15. Section 195 of the Bengal Tenancy Act must be taken to refer to all such tenures as are included in Regulation VIII of 1819.

The opinion of the Court (PETHEAM, C.J., and PRIGOR, O'KINEALY, MACPHERSON, and GHOSE, JJ.) was as follows :—

The contention that *dur-putni* tenures are included within the terms of clause (e) of section 195 of the Bengal Tenancy Act cannot, we think, be supported. The words “in so far as it relates to those tenures” must, we think, be treated as expressly limiting the provision to enactments relating to *putnis* properly and strictly so called, and as intended to exclude those which relate to tenures, which, although resembling *putnis*, as *dur-outnis*, &c., are not strictly *putnis*, not possessing all the qualities of them. We answer the question in the affirmative, and the appellants are therefore entitled to have the suit dismissed as against them with costs.

T. A. P.

(1) I. L. R., 16 Calc., 642.

(2) 13 B. L. R., 146; 20 W. R., 380.