

1895
ADMINIS-
TRATOR-
GENERAL
OF BENGAL
v.
PREMLAL
MULLICK.

when the clauses of an Act of the British Legislature are under construction, are equally cogent in the case of an Indian Statute.

Their Lordships will humbly advise Her Majesty to reverse the decrees appealed from, to dismiss the suit, and to direct that the costs of both parties in the Courts below, as between solicitor and client, shall be paid out of the estate of the deceased. The costs of this appeal must be borne by the estate in like manner.

Appeal allowed.

Solicitor for the appellant: Mr. J. F. Watkins.

Solicitors for the respondent, Premlal Mullick: Messrs. T. L. Wilson & Co.

C. B.

APPELLATE CIVIL.

Before Mr. Justice Pigot and Mr. Justice Stevens.

GOPI NATH BAGDI AND OTHERS (PLAINTIFFS) v. ISHUR CHUNDRABAGDI AND OTHERS (DEFENDANTS).*

1895
May 28.

Co-sharers—Bengal Tenancy Act (VIII of 1885), sections 171, 174—Payment of decretal amount by one co-sharer to set aside sale, Effect of—Charge.

Where the plaintiffs and defendants were co-tenants of certain *jotes* which were sold by auction in execution of a decree for rent, and the plaintiffs, by paying the decretal amount and auction-purchaser's fees under section 174, Bengal Tenancy Act, had the sale set aside,

Held, that the plaintiffs did not by such payment acquire a charge on the shares of their defaulting co-tenants. *Kinu Ram Das v. Mozaffer Hosain Shaha* (1) followed.

The plaintiffs and defendants were co-tenants in two *jotes* held under their talukdar, Rajani Kanta Dutta, who obtained a decree against them for rent, in execution of which the defaulting *jotes* were sold by auction. The plaintiffs, under the provisions of section 174 of the Bengal Tenancy Act, paid into Court the sum of Rs. 170-9½ in liquidation of the decretal amount, and the sum of

* Appeal from Appellate Decree No. 1192 of 1894, against the decree of Babu Rajendro Kumar Bose, Subordinate Judge of Burdwan, dated the 23rd of April 1891, affirming the decree of Babu Loke Nath Nundy, Munsif, first Court, Burdwan, dated the 15th of June 1893.

Rs. 15-5 for payment to the auction-purchaser ; and the auction sale was accordingly set aside. The present suit was brought by the plaintiffs for contribution, and for a declaration that the plaintiffs had acquired a charge on the shares of their defaulting co-sharers for their proportion of the amount paid on their behalf by the plaintiffs. It was held by the Subordinate Judge of Burdwan (affirming the decision of the Court of first instance) that the said payment by the plaintiffs to have the sale set aside gave them no charge on the shares of their co-sharers. From this decision the plaintiffs brought this appeal to the High Court.

Babu *Bepin Behary Ghose* (Jr.) for the appellants.—The plaintiffs paid the entire amount of the money payable by them and their co-sharers, the defendants, in order to protect the holdings from being sold under the rent decree. The defendants have been immensely benefitted by this payment. But for this the rights of the co-sharers in the property would have been extinguished. I contend that this payment being necessary to save the interests of the co-sharers in the holdings gives the plaintiffs a charge on the share of each of the defendants for the proportion of the decretal amount payable by such defendant. By section 171 of the Bengal Tenancy Act the proportion of the amount payable by the defendants should be deemed to be a debt secured by a mortgage of the shares of the defendants in the holdings.

Babu *Nara Chandra Chakravarti* for the respondents.—There is no charge on the shares of the co-sharers. The Full Bench have decided in *Kinu Ram Das v. Mozaffer Hosain Shaha* (1) that there is no general rule of equity to the effect that whoever, having an interest in an estate, makes a payment in order to save the estate, obtains a charge on the estate. Section 171 does not apply, for the payment described in that section is one made before sale and not after sale as in section 174. Besides, section 174 gives no such charge, and therefore it must be taken that the Legislature intended that there should be none.

The judgment of the Court (PIGOT and STEVENS, JJ.) was delivered by

PIGOT, J.—As to the general principle upon which the learned pleader for the appellants stated the case to us, we think we are

(1) I. L. R., 14 Calc., 809.

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bound by the case of *Kinn Ram Das v Mozaffer Hosain Shaha* (1) which we are unable to distinguish in principle from the case made on behalf of the appellants ; and we think that a payment of a nature so peculiar as that under section 174 would need some indication in the Act itself in connection with that section before we should feel at liberty to accede to the appellants' contention by declaring that, besides their right to contribution personally, they had also a right to a charge on the property so far as the shares of their co-tenants are concerned for the amount paid by them under the provisions of that section. There is nothing in the section which contemplates any such right or privilege on the part of the person paying, and we do not think we should add such a provision as that to section 174.

We therefore dismiss the appeal with costs.

F. K. D.

Appeal dismissed.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

1895
 June 10.

AUBHOYA DASSI (DECREE-HOLDER) v. PUDMO LOCHUN MONDOL,
 JUDGMENT-DEBTOR AND ANOTHER (PETITIONER.)*

Sale for arrears of rent—Civil Procedure Code (Act XIV of 1882), sections 311 and 312—Application to set aside a sale of a tenure by a purchaser from the judgment-debtor prior to attachment—Second appeal—Order setting aside sale—Civil Procedure Code, section 622.

A person who claims to be a purchaser of a tenure prior to attachment from a judgment-debtor whose interest in the tenure has been sold in execution of a decree for its own arrears of rent, is entitled to apply under section 311 of the Code of Civil Procedure to set aside the sale. *Asmutumissa Begum v. Ashruff Ali* (2) distinguished.

No second appeal lies from an order under section 312 of the Code setting aside a sale [*Nana Kumar Roy v. Golam Chunder Dey* (3) followed] and the Court refused under the circumstances to interfere under section 622.

THIS appeal arose out of an application by the purchaser of a tenure from the judgment-debtor to set aside a sale of the tenure

* Appeal from Order No. 311 of 1894, against the order of H. W. C. Carniff, Esq., Officiating Additional District Judge of 24-Pergunnahs, dated the 4th of August 1894, affirming the order of Babu Hurro Mohan Bose, Additional Munsif of Diamond Harbour, dated the 5th of June 1894.

(1) I. L. R., 14 Calc., 809.

(2) I. L. R., 15 Calc., 488.

(3) I. L. R., 18 Calc., 422.