

CIVIL RULE.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and
Mr. Justice Cox.*

ASIRUDDI MANDAL

v.

MOKHADA MOYEE DASL.*

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Bengal Tenancy Act (XIII of 1885), ss. 143, 170—Bengal Tenancy Amendment Act (Bengal Act I of 1907), s. 54—Civil Procedure Code (Act XIV of 1882), s. 310A.

Even before the passing of the Bengal Tenancy Amendment Act of 1907, s. 310A of the Code of Civil Procedure did not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

In execution of a decree for rent against the tenant, a tenancy was sold on the 7th May 1907 and purchased by Asiruddi Mandal, the petitioner. On the 23rd May 1907, the opposite party, Mokshadamayee Dasee, alleging herself to be an under-raiyat in the tenancy sold, applied under s. 310A of the Civil Procedure Code to have the sale set aside after depositing the amount.

The Munsif of Basirhat, to whom this application under s. 310A was made, on the 16th July 1907 held that the opposite party had a *locus standi* to apply under s. 310A and set aside the sale, notwithstanding an objection by the petitioner.

Babu Atul Krishna Ray, for the petitioner, contended that as the amending Act, Bengal Act I of 1907, came into force on the 22nd May, the day that it was gazetted, an application by the opposite party under s. 310A of the Civil Procedure Code did not at all lie.

Babu Baikunthanath Das, for the opposite party. As the proceedings in this case commenced before the amending Act came into force, by s. 8(c) of Bengal General Clauses Act

* Civil Rule No. 2795 of 1907, against the order of the Munsif of Basirhat, dated July 16, 1907.

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(Bengal Act I of 1907), I got a vested right to save the property by depositing the money under s. 310A of the Civil Procedure Code: see *Jogdanund Singh v. Anwita Lal Sircar*(1), *Chandra Kumar Nath v. Kamini Kumar Ghose*(2) is exactly in point and in my favour.

Babu Atul Krishna Ray, in reply. By the Bengal Tenancy Act, s. 107, cl. (2) the opposite party could have paid and saved the property. There is no saving clause in the amending Act of 1907: see also *Abed Mollah v. Diljan Mollah*(3), which is in my favour. *Paresh Nath Singha v. Nabogopal Chattopadhyaya*(4) and *Narain Mandal v. Sourindra Mohan Tagore*(5) cited by the other side are distinguishable. There cannot be a vested right in one, who was no party to the former proceedings.

MACLEAN C. J. This is an application under section 622 of the Code of Civil Procedure, to discharge an order of the Munsif of Basirhat, dated the 16th of July 1907, by which he gave an under-raiyat liberty to pay in the purchase-money under section 310A of the Code of Civil Procedure. The auction-purchaser applied for a Rule to discharge that order on the ground that the Judge had no jurisdiction to make it: and a Rule was granted.

It appears now that the application, upon which the order of the Judge was passed, was made on the 23rd of May 1907. But on the previous day, the 22nd of May 1907, the amending Bengal Tenancy Act (Act I of 1907) came into operation, and, by section 54, amending section 170 of the existing Bengal Tenancy Act, it was enacted that the words "310A" should be inserted in section 170. The effect of that amendment was to prevent any order being passed under section 310A of the Code: and, if the matter had rested there, the Rule must have been made absolute. Whilst the opposite party concedes that, it is urged that he is protected under section 8, subsection(c) of the Bengal General Clauses Act (Act I of 1899). That section

(1) (1895) I. L. R. 22 Calc. 767.

(3) (1902) I. L. R. 29 Calc. 459.

(2) (1907) 11 C. W. N. 742.

(4) (1901) I. L. R. 29 Calc. 1.

(5) (1904) I. L. R. 32 Calc. 107.

runs as follows: "Where this Act, or any Bengal Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed." It appears that the execution proceeding and the sale in this particular case had taken place before the amended Bengal Tenancy Act came into operation on the 22nd of May 1907, and the argument is that section 54 of the amending Act repealed some portion of the Bengal Tenancy Act and that the opposite party had acquired a right, under section 310A, to come in and make the deposit, and that the repeal could not affect that right. That is in substance the argument submitted to us.

We must first consider, whether there has been any repeal of the Bengal Tenancy Act upon this point. In no part of the Bengal Tenancy Act (Act VIII of 1885) is section 310A of the Code of Civil Procedure referred to, and for the best of all reasons that it was not then in existence, inasmuch as section 310A was not added to the Code of Civil Procedure, until the 2nd of May 1894, that is nearly nine years after the Bengal Tenancy Act had been in operation. The argument of the opposite party is that section 170 does by implication, coupled with section 143 of the Bengal Tenancy Act, incorporate, if I may use the expression, all the sections of the Code of Civil Procedure relating to suits, except those, which are expressly excepted. Section 170 runs thus: "Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon." And section 143, subsection (2) runs as follows: "Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits." But those provisions can only apply to the Code of Civil Procedure, as it then stood, and it could never have been intended that all the provisions of any subsequent amendment of the Code were to apply. In this view, there was no repeal of any portion of the Bengal Tenancy Act, and consequently section 8 of the Bengal General Clauses Act has

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no application. No doubt, this Court has held, although there is some difference of opinion upon the point, that applications under section 310A may properly be made, where a tenure or holding has been attached in execution of a decree for arrears due thereon under the Bengal Tenancy Act. But for the reasons I have pointed out, there was no enactment to that effect under the Bengal Tenancy Act of 1885: nor could there have been any such, because, as I have said, the section was not then in existence.

For these reasons, I think the point taken by the opposite-party cannot prevail: and as it has been expressly enacted that section 310A was not to apply to a tenure or holding attached in execution of a decree for arrears due thereon, before the application to deposit the purchase-money was made, the Rule must be made absolute with costs.

COXE J. I agree.

Rule absolute.

S. M.