be made to *Khodeeram Serma* v. *Trilochun* (1), *Jankee Singh* v. *Bukhotree Singh* (2), *Pogose* v. *Nyamutoollah* (3), *Brij Bhookun* v. *Dabee Dyal* (4) and *Kalee Pershad Dutt* v. *Gouree Pershad Dutt* (5). It has also been recently ruled by Mr. Justice Bhashyam Ayyangar in *Ismai Kani Rowthan* v. *Nazarali Sahib* (6), that before the Transfer of Property Act came into operation, the English doctrine of fixtures did not prevail in this country, and that the Transfer of Property Act substantially reproduced the law on this subject as recognised by Hindu and Mahomedan jurisprudence. We must consequently hold that, in the case before us, the tenant did not exceed his rights when he cut down the jack fruit-tree which had been planted on his holding by one of his ancestors.

The result, therefore, is that this rule is made absolute, and the suit dismissed with costs both here and in the Court below.

S. A. A. A. *Rule absolute.*

(1) (1801) 1 Mac. Sel. Rep. 35.
(2) (1856) Beng. S. D. A. 761.
(3) (1858) Beng. S. D. A. 1517.
(4) (1863) 2 Agra S. D. A. 480.
(5) (1866) 5 W. R. 108
(6) (1903) I. L. R. 27 Mad. 211.

LETTERS PATENT APPEAL.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Doss.

NILADRI MAHANTI

v.

BICHITRANAND ROY.*

1910
May 27.

Under-tenure, sale of—Execution sale—Effect of sale of under-tenure by co-sharer landlord for arrears of rent—Non-registration of purchase in execution sale by the whole body of landlords—Locus standi to maintain a suit—Rent Recovery Act (X of 1859) ss. 27, 105, 106, 108, 109 and 110—Civil Procedure Code (VIII of 1859) s. 259—Landlord and Tenant Procedure Act (Beng. VIII of 1865).

While under s. 105 of Act X of 1859, which contemplates a decree by the landlord, or the whole body of landlords, for an arrear of the entire rents due in respect of an under-tenure, it is the tenure that is sold, under s. 108, which does not contemplate a decree for an arrear of rent, but a decree for money

* Letters Patent Appeal No. 20 of 1909 in Appeal from Appellate Decree No. 1775 of 1906.

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due on account of a share of rent and a suit for it by only a sharer in a joint undivided estate, it is only the right, title and interest of the judgment-debtor in the under-tenure that passes.

Doolar Chand Sahoo v. *Lalla Chabeel Chand* (1) and *Shamchand Kundu v. Brojonath Pal Chowdhry* (2) followed in principle.

The purchaser of an under-tenure under s. 105 of Act X of 1859 is entitled to maintain a suit for possession against a subsequent purchaser under s. 108, though he has not got his name registered in the landlord's sherista.

Kristo Chunder Ghose v. *Raj Kristo Bandyopadhya* (3) followed. *Luckhinarain Mitter v. Khettro Pal Singh Roy* (4) referred to.

Patit Shahu v. *Hari Mahanti* (5) distinguished. *Bichitrananda Roy* v. *Behari Lal Pandit* (6) questioned.

The mere fact that a person cannot succeed in a suit does not mean that he has no *locus standi* to maintain the suit.

It is only where the Legislature distinctly or in effect provides that certain conditions must be fulfilled to entitle a person to maintain a suit, and those conditions precedent are not fulfilled, that the person has no *locus standi* to sue.

APPEAL by the plaintiffs, Niladri Mahanti and others.

This appeal arose out of a suit for declaration of title to and recovery of possession of certain lands as *lakheraj bajeapti* lands. The case for the plaintiffs was that the *lakheraj bajeapti* tenure, a portion of which is the subject of the suit, was sold in 1900 in execution of a simple money-decree obtained by the defendant No. 9 against the defendant No. 2, and was purchased by the defendant No. 9 himself. The defendant No. 9 afterwards sold the land in suit, which is a portion of the aforesaid tenure, to the plaintiffs by a registered deed in October 1901. The defendants Nos. 4 to 8, who are the 8-anna co-sharer landlords of the estate in which the *lakheraj* tenure is situated, brought a suit for arrears of rent against the defendants Nos. 1 and 2, and on the 28th January 1902 put the tenure to sale. The defendant No. 3 purchased it at that sale and was put in possession. The defendant No. 3 is the contesting defendant in the present suit. The plaintiffs contested the purchase of the defendant No. 3, mainly on the grounds that the purchase by their vendor was earlier, and that the defendants Nos. 4 to 8 being only co-sharer landlords, defendant No. 3

(1) (1878) L. R. 6 I. A. 47; 3 C. L. R. 561.
(2) (1873) 12 B. L. R. 484; 21 W. R. 94.
(3) (1885) I. L. R. 12 Calc. 24.
(4) (1873) 13 B. L. R. 146; 20 W. R. 380.
(5) (1900) I. L. R. 27 Calc. 789.
(6) (1906) 5 C. L. J. 89.

acquired only the right, title and interest of the defaulting judgment-debtors by the purchase. On the other hand, the plaintiffs admitted that their vendor's name had not been entered in the zemindar's *sherista*. The Munsif held that the plaintiffs' vendor had acquired title to the tenure as against the purchaser at an auction sale held in execution of a decree obtained by co-sharer landlords, notwithstanding the fact that his name was not entered in the zemindar's *sherista*. He therefore held that the plaintiffs' title to the lands in suit was good, and he accordingly decreed the suit. On appeal, the District Judge held that the plaintiffs had no *locus standi* to maintain the suit, and reversed the judgment and decree of the Munsif. The judgment of the District Judge was confirmed on second appeal by Brett J., sitting singly. The plaintiffs thereupon preferred this appeal under section 15 of the Letters Patent.

Babu Prabhash Chandra Mitra (with him *Babu Sushilmadhab Mallik*), for the appellants. A sale under Act X of 1859, in execution of a decree obtained by a co-sharer landlord for his share of rent, can only be held under section 108 and section 110 of the Act. The language of section 108 clearly indicates that the decree is not a rent-decree in the strict sense of the term, but a decree for money on account of rent. Section 110, para. 2, lays down the procedure to be adopted when an under-tenure is sought to be sold in execution of such a decree. The words clearly indicate that the sale is to be held under the provisions of the Civil Procedure Code, and what passes under such a sale is only the right, title and interest of the judgment-debtor. The difference between the language of section 108 and section 105 makes the distinction all the more clear. Section 105 relates to sales held in execution of a decree for arrears of rents obtained by the sole landlord or the whole body of landlords. By the wording of that section, such sales used then to be held under Bengal Act VIII of 1865. The whole tenure passes in such a sale: *Grish Chunder Mitter* v. *Shaikh Jhakoo* (1), *Nund Lall Boy* v. *Gooroo Churn Bose* (2), *Bhaba Nath Roy Chowdhry*

(1) (1872) 17 W. R. 352. (2) (1871) 15 W. R. 6.

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v. *Durga Prosunno Ghose* (1). On the question of *locus standi*, section 27 of Act X of 1859 does not expressly provide that an unregistered transferee should have no *locus standi*. The object of the section is simply that the zemindar should have information as to who is the tenant : *Nobeen Kishen Mookerjee* v. *Shib Pershad Pattuck* (2) and *Kristo Chunder Ghose* v. *Raj Kristo Bandyopadhya* (3). The last case cited is an authority in my favour, inasmuch as section 64 of Act VIII (B.C.) of 1869 is substantially the same as section 108 of Act X of 1859. It is submitted that the case of *Bichitrananda Roy* v. *Behari Lal Pandit* (4), relied on by Brett J., is not good law.

Babu Greesh Chandra Pal, for the respondents. *Bichitrananda Roy* v. *Behari Lal Pandit* (4) is in point and in my favour. The case of *Kristo Chunder Ghose* v. *Raj Kristo Bandyopadhya* (3) cited for the appellants was a case under Act VIII (B. C.) of 1869 and is inapplicable. The cases of *Nund Lall Roy* v. *Gooroo Churn Bose* (5) and *Grish Chunder Mitter* v. *Shaikh Jhakoo* (6) are also distinguishable, the facts in those cases being different. Moreover, these cases conflict with the later decisions of this Court in *Patit Shahu* v. *Hari Mahanti* (7) and *Bichitrananda Roy* v. *Behari Lal Pandit* (4) : see also *Shamchand Kundu* v. *Brojonath Pal Chowdhry* (8). Section 64 of Act VIII of 1869 is not the same as section 108 of Act X of 1859. Section 27 of Act X is clear in its terms and the plaintiffs are debarred from maintaining this suit.

JENKINS C.J. This appeal arises out of a suit brought by the plaintiffs to recover possession of certain land which they claim to be their under-tenure. The Munsif passed a decree in the plaintiff's favour. This was reversed by the lower Appellate Court ; and, on appeal to this Court, Mr. Justice Brett has confirmed the decree of the lower Appellate Court. The present appeal is from Mr. Justice Brett's judgment under section 15 of the Letters Patent.

(1) (1889) I. L. R. 16 Calc. 326.
(2) (1867) 8 W. R. 96.
(3) (1885) I. L. R. 12 Calc. 24.
(4) (1906) 5 C. L. J. 89
(5) (1871) 15 W. R. 6.
(6) (1872) 17 W. R. 352.
(7) (1900) I. L. R. 27 Calc. 789.
(8) (1873) 12 B. L. R. 484.

The facts which have given rise to this suit can be briefly stated. The plaintiffs, on the 14th October 1901, purchased the land in suit from defendant No. 9, who himself purchased the under-tenure, of which this land forms part, on the 15th of December 1900 at a sale held in execution of a money-decree passed against defendant No. 1 and the father of defendant No. 2. On the 28th of January 1902, the under-tenure was again put up to sale in execution of a decree against defendants Nos. 1 and 2 obtained by defendants Nos. 4 to 8, who were sharers in the estate to the extent of 8 annas, and claimed in the suit their share of the rent. At that sale defendant No. 3 purchased, and on the 17th of July 1902 he took possession of the property, and thereby, it is said, dispossessed the plaintiffs and their vendor, defendant No. 9. The plaintiffs claim that defendant No. 3 took nothing by his sale as against them, inasmuch as the decree was not a decree for rent, but was a decree for money due on account of a share of the rent of the under-tenure.

The answer made on behalf of defendant No. 3 is that the plaintiffs cannot be heard to advance this contention because they have no *locus standi*, whatever that may mean, inasmuch as the transfer to their vendor as well as to themselves has not been registered in the manner contemplated by section 27 of Act X of 1859. This view has found favour with the lower Appellate Court and with Mr. Justice Brett. The question is whether it can be sustained.

Now, it is to be noticed that the sale to defendant No. 3 was not under section 105 of Act X of 1859, but under section 108, and the distinction is vital. Thus, section 105 contemplates a decree for an arrear of rent due in respect of an under-tenure, and, further, it contemplates that it should be a decree by the landlord, or the whole body of landlords, for the entire rent. The consequence of such a decree is that what is brought to sale is "the tenure.... according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof," an expression which was held by the Privy Council in *Brindabun Chunder Sircar Chowdhry* v. *Brindabun Chunder*

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Dey Chowdhry (1) to refer to the rules contained in Regulation VIII of 1819 and I of 1820 when Act X of 1859 was passed. Since 1865 these sales have been regulated by Act VIII of 1865 (B. C.). Turning on the other hand to section 108, what is there contemplated is not a decree for an arrear of rent, but a decree for money due on account of a share of rent, and not a suit brought by the landlord or the whole body of landlords, but by a sharer in a joint undivided estate, and it is from the failure to observe the distinction between section 105 and the clauses which are its proper sequel on the one hand, and section 108 and those that amplify it on the other, that the difficulty in this case has arisen. The sale on which defendant No. 3 in this case relies was in execution of a decree under section 108, and it is necessary to see what precisely Act X of 1859 provides in relation to such a decree and its execution. It provides that the under-tenure may be brought to sale in execution of the decree in the same manner as any other immoveable property may be sold in execution of a decree for money under the provisions of sections 109 and 110. Section 109 imposes conditions precedent to the right of the decree-holder to apply for execution against any immoveable property belonging to the debtor. We have no concern with those conditions in this case, because no point has been made with reference to this matter in the lower Courts. Section 110 provides that if, as is the case here, the property be a saleable under-tenure, it shall be sold under the provisions of law for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof. When Act X of 1859 came into operation, the law for the time being in force was Act VIII of 1859 which, in section 259, provided that, "after a sale of immoveable property shall have become absolute in the manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title and interest of the defendant in the property sold, and such certificate shall be taken and deemed to

(1) (1874) 13 B. L. R. 408; L. R. 1 I. A. 178.

be a valid transfer of such right, title and interest." That section is clearly one of those which would certainly be part of the law for the time being in force applicable to the sales of under-tenures for demands other than those of arrears of rent, so that this section indicates what would at that time have passed to a purchaser in the case of a sale in execution of a decree for money due on account of a share of rent. The distinction, therefore, between that which passes on a sale on a decree under section 105, and that on a decree under section 108, is manifest. The matter is brought out with clearness by their Lordships of the Privy Council in *Doolar Chand Sahoo* v. *Lalla Chabeel Chand* (1), where it said—"Now it is clear that in attaching the property of a judgment-debtor, whether in an under-tenure or in an ordinary leasehold interest, under Act VIII of 1859, you can only attach and sell the right, title and interest of the judgment-debtor; but if you proceed to sell a tenure under section 59 of Act VIII of 1869, then you sell the tenure; and by virtue of section 66 of the same Act, the purchaser, under the provisions of sections 59 and 60 of the Act, acquires 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." So that it may, I think, fairly be said that while under section 105, which is the equivalent of section 59 of Act VIII of 1869, the tenure would be sold under section 108, it is only the right, title, and interest of the judgment-debtor in the under-tenure that would pass. That is how the matter stood in 1859; but ever since then it has been the accepted doctrine that all that a purchaser would take at a sale in execution under the several successive Codes of Civil Procedure would be the right, title and interest of the judgment-debtor. The same view receives the sanction of the Full Bench in *Shamchand Kundu* v. *Brojonath Pal Chowdhry* (2). I refer in particular to the remarks made by Mr. Justice Jackson in the course of his judgment. If, then, the matter stood

(1) (1878) L. R. 6 I. A. 47, 51; 3 C. L. R. 561.

(2) (1873) 12 B. L. R. 484; 21 W. R. 94.

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there, we should have this position, that all that defendant No. 3, the purchaser at the subsequent execution sale, would get would be the right, title and interest of the judgment-debtor at that time; in other words, he would get nothing so far as the land in suit is concerned, because, before that execution-purchase, the property had passed successively to defendant No. 9 and the present plaintiffs.

It is next said that the plaintiffs cannot rely on the title so acquired, or, as it has been expressed, that he has not got a *locus standi*. I view the expression *locus standi* with some apprehension, because I do not pretend to know what it precisely means in this connection. Does it mean that defendant No. 9 and the plaintiffs acquired no title because there was no registration? If that be the contention, then there is a complete answer to this view in the decision of Mr. Justice Wilson and Mr. Justice Beverley in *Kristo Chunder Ghose* v. *Raj Kristo Bandyopadhya* (1), and of the Privy Council in *Luckhinarain Mitter* v. *Khettro Pal Singh Roy* (2), where, in regard to the effect of similar provisions in Regulation VIII of 1819 for registration of transfer of tenures in the zemindar's *sherista*, their Lordships say—"The plaintiffs were assignees of the *darpatni talook*, and though the transfer was not registered, they had the right and were compelled to deposit the amount of rent due to the zemindar in order to protect their own interest." If, on the other hand, it is meant that the plaintiffs have no right to sue, then this contravenes the general principle that a man in possession of property lawfully acquired by him, but invaded by another, has a right to sue in respect of trespass on it. Whether he will succeed or not is a different question; but the mere fact that he does not succeed does not mean that he has no *locus standi*. I can understand its being said that a person has no *locus standi* where the Legislature in effect so provides, as, for instance, in section 106 of Act X of 1859, which is limited in its operation to sales under section 105 of transferable tenures in execution of decrees for arrears of rent. It is there provided that while third parties claiming to be the lawful

(1) (1885) I. L. R. 12 Calc. 24.

(2) (1873) 13 B. L. R. 146, 156; W. R. 380.

possessors of the under-tenure may apply for stay of sale and enquiry, no transfer of the under-tenure, which by the provisions of the Act or any other law for the time being in force is required to be registered in the *sherista* of the zemindar or superior tenant, should be recognized, unless it has been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector. This is a distinct provision of the law that, notwithstanding the title acquired by transfer, it shall not be recognised for the particular purpose contemplated by that section. But the present suit is not one which comes within section 106, and there is no similar provision in relation to a sale under section 108, so that the contention that the present plaintiffs have no *locus standi* is not one that can properly be applied to the circumstances of this case. But it is contended that there are two decisions of this Court by which we are required to hold that the plaintiffs have no *locus standi*. No doubt it was decided in *Patit Shahu* v. *Hari Mahanti* (1), that plaintiffs who had not registered their names in the landlord's *sherista* had no *locus standi* for the purposes of that suit. But the learned Judges based that proposition solely on the case to which I have referred of *Shamchand Kundu* v. *Brojonath Pal Chowdhry* (2), which was a case that turned upon section 105 of Act X of 1859, and not upon section 108, and in which, as I have already remarked, the distinction between sections 105 and 108, and the consequence of those sections, have been noticed by one of the learned Judges who was a party to the decision. What the facts were which the Court in *Patit Shahu's case* (1) accepted as facts for the basis of their decision is not clear, but, as far as I can see, the learned Judges in that case did not base their decision on the view that the decree was obtained by one who was a co-sharer, and the language of their judgment is equally consistent with their having supposed that the landlord on whose decree the sale was obtained was the sole landlord. If he was regarded by them as the sole landlord, then the case is no authority for the position with which we have to deal. If they did not so regard him,

(1) (1900) I. L. R. 27 Calc. 789.

(2) (1873) 12 B. L. R. 484; 21 W. R. 94.

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then it appears to me that they failed to observe the sharp distinction drawn by the(Legislature, as also the decision of Mr. Justice Wilson, in the case of *Kristo Chunder Ghose* v. *Raj Kristo Bandyopadhya* (1) and of the Full Bench decision in *Shamchand Kundu* v. *Brojonath Pal Chowdhry* (2). The other case, to which our attention has been invited, is that of *Bichitrananda Roy* v. *Behari Lal Pandit* (3). That case proceeds upon the view that the plaintiff had no *locus standi*. I have already explained my difficulties with regard to that proposition, and I cannot suppose for a moment that the learned Judges in that case intended to come to a decision which was opposed to the view expressed by the Full Bench, or to the actual decision in *Kristo Chunder Ghose* v. *Raj Kristo Bandyopadhya* (1). The fact is that the decision in *Kristo Chunder Ghose's case* (1) is undistinguishable from the present but for the fact that it proceeded upon Act VIII of 1869, whereas in this case we are concerned with Act X of 1859. But that is merely a difference of name. The provisions of the law in the two cases are substantially the same, and there is no fair distinction that can be drawn for the purposes with which we are now concerned, between the present case and that in *Kristo Chunder Ghose* v. *Raj Kristo Bandyopadhya* (1).

The result, therefore, is that, holding as we must on the plain words of the Act, and also on authorities to which I have adverted, that the plaintiffs acquired a title notwithstanding the absence of registration, and, further, that all that defendant No. 3 took was the right, title and interest of the judgment-debtor, which at that date was nothing so far as concerns the property now in suit, it necessarily follows that the plaintiffs are entitled to the relief they ask of possession as against defendant No. 3.

We must, therefore, set aside the judgment of Mr. Justice Brett and of the lower Appellate Court, and restore the decree of the Munsif with costs throughout.

Doss J. concurred.

S M. *Appeal allowed.*

(1) (1885) I. L. R. 12 Calc. 24. (2) (1873) 12 B. L. R. 484; 21 W. R. 94. (3) (1906) 5 C. L. J. 89.