

of section 29 of the Bengal Tenancy Act, then an enquiry should be directed which will bring to light the prevailing rate of rent paid by occupancy *raiyats* for land of a similar description and with similar advantages in neighbouring villages.

The result then is that disagreeing, as I do, with the judgment of Mr. Justice Caspersz, I hold that the decree of the lower Appellate Court was erroneous, and should be set aside, and the case should be sent back to the Munsif for rehearing in the light of these remarks.

The appellants will get their costs in the High Court, that is to say, the costs connected with the hearing before Mr. Justice Caspersz and before this Bench. The costs in the lower Courts will abide the result.

This judgment will govern the other two appeals.

Doss J. I agree.

S. M.

Appeal allowed; case remanded.

APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Sharfuddin.

JAGANNATH

v.

MOHIUDDIN MIRZA.*

1910
April 28.

*Putni Tenure—Putni Regulation (VIII of 1819), s. 17, cl. (c)—Arrears of rent—
—Arrears previous to the current year for which the sale took place—Personal
debt—Bengal Tenancy Act (VIII of 1885) s. 65—First Charge.*

Under the Putni Regulation, VIII of 1819, s. 17, cl. (c), where the arrears of rent claimed are for balances due for periods prior to the current year for which the arrears are due when the sale is held in the middle of the year, or prior to the year preceding if the sale be held at the commencement of the following year, these balances must be treated as personal debts recoverable

* Appeal from Appellate Decree, No. 1251 of 1908, against the decree of F. S. Hamilton, District Judge of Purneah, dated March 6, 1908, confirming the decree of Nogendra Nath Das, Subordinate Judge of Purneah, dated Sept. 16,

1907

1910
 JAGANNATH
 v.
 MOHUDDIN
 MIRZA.

under the ordinary procedure for recovery of debts, and not as rents recoverable under the provisions of the Tenancy law, and that in such a case the provisions of section 65 of the Bengal Tenancy Act would not have any application.

Peary Mohan Mukhopadhyaya v. Sreeram Chandra Bose (1), commented on and distinguished.

SECOND APPEAL by the plaintiffs, Jagannath and others.

This appeal arose out of a suit brought by the plaintiffs against the defendants to recover a certain sum of money as the surplus sale-proceeds of the *putni mehal* named Kalughat. The ancestor of the defendants second party, one Rahaman Buksh, held this *putni mehal* under defendants first party. Rahaman Buksh mortgaged the *putni* to the ancestor of the plaintiffs by a bond, dated the 3rd of December 1897. On the 8th of March 1905, the *putni mehal* was sold in execution of the mortgage decree which the ancestors of the plaintiffs had obtained, and was purchased by them. The sale was confirmed on the 15th of May 1905. Meanwhile, the *putni* rent due to defendants first party for 1312 M. S. having fallen into arrears, the zemindars brought the *putni* to sale under Regulation VIII of 1819, on the 15th of May 1905 (1st of Jeyt 1313 M. S.). After deducting the amount due as rent for 1312 M. S., there was a surplus of Rs. 1,011-5, which was kept in the name of defendants second party. The plaintiffs applied to get that money, but their application was refused. They brought a suit against the defendants first party for declaration of title and for recovery of the said money. The suit was decreed on the 8th of August 1905. The defendants first party brought a suit for the rent of the *putni mehal* for the period prior to 1312 M. S., in the court of the Munsif at Kishenganj, and had got the money attached before judgment. Later on they obtained a decree. The plaintiffs endeavoured to execute their decree, but found that defendants first party had attached the money. The plaintiffs then moved the District Judge to issue a notice against the defendants first party. On the 20th of December 1905, it was decided that the latter was entitled to a rateable distribution along with the plaintiffs. They appealed to the High Court

(1) (1902) 6 C. W. N. 794.

against this order, and the appeal was dismissed on the ground that no appeal lay. Hence this suit was brought by the plaintiffs.

The defendants pleaded, *inter alia*, that the surplus sale-proceeds were entirely due to them and not to the plaintiffs, as the rents for which these defendants had obtained the decree was the first charge on the *putni mehal*.

The Court of first instance holding that the plaintiffs were not entitled to any part of the surplus sale-proceeds before the amount due to the landlord defendants were paid, gave the plaintiffs a decree for the sum which was left after payment to the landlords. On appeal, the learned District Judge affirmed the decision of the first Court, on the ground that, "under section 17, clause (3) of Regulation VIII, the *putnidar* is entitled to the balance of the sale-proceeds, provided that the sale be at the commencement of the year following that for the rent of which the *putni* is brought to sale. The sale took place on the 1st Jeyt 1313 M. S. (15th May 1905), that is to say, on the first day of the second month of the Mulki year which begins from Bysack."

Against that decision the plaintiffs appealed to the High Court.

Babu Naliniranjan Chatterjee (with him *Babu Nanda Lal Banerjee*), for the appellants. The Court below has put a wrong construction upon the provisions of section 17, clause (c) of Regulation VIII of 1819. The zemindar is not entitled to get the former balance, *i.e.*, any balance prior to the period for which the sale under the Putni Regulation took place, from the proceeds of the sale. Such balance is a mere personal debt of the *talukdar*, and must be recovered in the same way as other debts by a regular suit. The zemindar has no charge upon the surplus sale-proceeds. The mortgaged property having been sold under Regulation VIII of 1819 for arrears of rent, the mortgage lien under section 73 of the Transfer of Property Act was transferred to the surplus sale-proceeds, and the plaintiffs were entitled to the sale.

Babu Satis Chandra Ghose (for *Babu Hemendra Nath Sen*), for the respondents. The zemindar had a charge over the

1910

JAGANNATH
v.
MOHIUDDIN
MIRZA.

1910
 JAGANNATH
 v.
 MOHUDDIN
 MIRZA.

surplus sale-proceeds. No doubt the decree was for the balance of the period prior to the year for which the *putni* sale took place, and it might be a mere personal debt which could not be summarily recovered under the procedure prescribed by the Putni Regulation, yet it might be a charge on the *taluk*, and the *taluk* might be sold subject to it. Section 65 of the Bengal Tenancy Act applies to the case. There is no conflict between section 65 of the Act and section 17, clause (c) of the Putni Regulation: *Peary Mohan Mukhopadhyaya v. Sreeram Chandra Bose* (1). That being so, the plaintiffs are not entitled to the surplus sale-proceeds.

Babu Naliniranjan Chatterjee, in reply.

BRETT AND SHARFUDDIN, JJ. The ancestors of the present appellants held a mortgage, dated the 19th Aghrayan 1305 M. S. (3rd December 1897), executed in their favour by one Rahaman Buksh, the ancestor of the defendants second party, by which the *putni mehal* Kalughat was hypothecated for payment of a debt. The ancestors of the appellants brought a suit on the mortgage bond to recover the debt, and obtained a decree, and, in execution of that decree, the *putni mehal* was put up to sale and was purchased by them on the 8th March 1905. The sale was confirmed on the 15th May 1905. Meanwhile, the rent due on the *putni* by the defendants second party to the defendants first-party, the zemindars, for the year 1312 M. S. had fallen into arrears, and, in consequence, the defendants first party brought the *putni* to sale under Regulation VIII of 1819 on the 15th May 1905. The *putni* was sold, and, after deducting the amount due as rent for 1312, there remained a surplus of Rs. 1,011-5 which was kept in deposit in the names of the defendants second party. The present suit was brought by the plaintiffs appellants to recover that sum of money as representing the property which had been purchased by their ancestors in the execution of the decree obtained on their mortgage. Under the provisions of section 73 of the Transfer of Property Act, the charge which the mortgagees

(1) (1902) 6 C. W. N. 794.

had on the *putni mehal* was transferred after the sale to the sale-proceeds, and the plaintiffs, therefore, claimed to be entitled to the sum of Rs. 1,011-5, as representing the charge which they had under their mortgage, and the property they had purchased under their decree. When the plaintiffs went to execute their decree, they found that the defendants first party, the landlords, had attached the money in execution of a decree obtained by them for rent due in respect of the *putni mehal* for a period prior to 1312. The plaintiffs' case was that the defendants first party had no right to attach that sum of money for the arrears due prior to 1312.

The Court of first instance gave the plaintiffs a decree for Rs. 99-5, being the balance out of Rs. 1,011-5 which remained after deducting the sum claimed by the defendants first party as rent due to them for the period prior to 1312. The plaintiffs appealed to the lower Appellate Court, but the appeal was dismissed. The plaintiffs have now appealed to this Court.

The first question which we have to decide is whether the learned Judge was right in the interpretation which he has placed on section 17, clause (3) of Regulation VIII of 1819, the Putni Regulation. The learned Judge appears to have held that, under section 17, clause (3) of Regulation VIII of 1819, the zemindars are entitled to the balance of the sale proceeds, because the arrears were due for a year preceding the year for the arrears of which proceedings had been taken under the Putni Regulation. That, however, does not appear to us to be a correct interpretation of the section. The section distinctly provides that "no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the zemindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become, in fact, mere personal debts of the individual *talukdar*, and must be recovered in the same way as other debts by a regular suit in the Court." Section 17, it may be mentioned, lays down the rules for the disposal of the proceeds

1910
JAGANNATH
v.
MOHIUDDIN
MIRZA.

1910
 JAGANNATH
 v.
 MOHIUDDIN
 MIRZA.

of any sale made under the rules in this Regulation. In our opinion, it is clear that, under the terms of clause (3) of section 17 of the Putni Regulation, the landlords had no right to have the arrears of rent due for a period prior to 1312 paid out of the proceeds of the sale of the *putni mehal*. It has, however, been contended that, under section 65 of the Bengal Tenancy Act, the landlords have the first charge on the tenure, and that, in consequence, they are entitled to priority over the plaintiffs in recovering the money due as rent under that charge. For the appellants, it has been argued that section 65 of the Bengal Tenancy Act cannot be held to give to the landlords the first charge on the sale-proceeds of a *putni mehal* for arrears of rent due beyond those of the current year in which the sale took place, or of the year which had expired if the sale took place at the commencement of the following year, inasmuch as, under the provisions of section 17 of Regulation VIII of 1819, such antecedent balances are expressly declared to be recoverable only as personal debts of the landlord. In our opinion this view is correct, and, as we interpret section 17 of Regulation VIII of 1819, section 65 of the Bengal Tenancy Act gave to the defendants first party, the landlords, no right to recover the rent for the years previous to 1312 as being the first charge on the sale-proceeds.

It has, however, been argued on behalf of the appellants that a different view has been taken by this Court in the case of *Peary Mohan Mukhopadhyaya v. Sreeram Chandra Bose* (1). There the learned Judges expressed the opinion that there was no conflict between section 65 of the Bengal Tenancy Act and section 17, clause (3) of the Putni Regulation. The facts of that case are different from those of the present case, in that, in the case referred to, the purchaser of the *putni taluk* had purchased it in execution of a rent decree, whereas, in the present case, the *taluk* was sold under the provisions of Regulation VIII of 1819. That case, therefore, can have no application to the present case. But we may observe at the same time that we regret we are unable to agree with the learned Judges who

(1) (1902) 6 C. W. N. 794.

decided that case in holding that there is no conflict between section 65 of the Bengal Tenancy Act and section 17, clause (3) of Regulation VIII of 1819. In our opinion, in a case like the present, where the arrears of rent claimed are for balances due, as explained in section 17 of the Putni Regulation, for periods prior to the current year for which the arrears are due when the sale is held in the middle of the year, or prior to the year preceding if the sale be held at the commencement of the following year, these balances must be treated as personal debts recoverable under the ordinary procedure for recovery of debts, and not as rents recoverable under the provisions of the tenancy law, and that, in such a case, the provisions of section 65 of the Bengal Tenancy Act would not have any application. We, therefore, hold, disagreeing with both the lower Courts, that the plaintiffs are entitled to claim the surplus sale-proceeds as representing the mortgage debt due to them and the property which they had purchased in execution of the mortgage decree, and that the defendants first party, the landlords, have no right to recover from these sale-proceeds the previous balances of rent as being a first charge on those proceeds. The result, therefore, is that the appeal is decreed, the judgments and decrees of both the lower Courts are set aside, and the plaintiffs' suit is decreed with costs against the defendants first party in all the Courts.

1910
 JAGANNATH
 v.
 MOHIUDDIN
 MIRZA.

Appeal allowed.