

FULL BENCH.

Before Jenkins C.J., Harington, Stephen, Mookerjee and Holmwood JJ.

1913

Jan. 14.

SHAMBHU NATH SINGH

v.

SHEO PERSHAD SINGH.*

“*Landlord's interest,*” meaning of—*Bengal Tenancy Act (VIII of 1885)*
s. 148, cl. (h).

By the term “landlord's interest” in s. 148, cl. (h), of the Bengal Tenancy Act, is meant the interest of the person entitled to receive the rent from the tenant at the date of the application for the execution of the decree.

THE reference to a Full Bench by Woodroffe and Richardson JJ. was as follows:—

“This second appeal arises out of an application under section 47 of the Code. The judgment-debtor objected to execution, which was disallowed. The appellant is the admitted landlord of a village. He granted a *ticca* of it to certain persons, which expired on the 15th June, 1908. During the pendency of the lease the *ticculars* obtained a rent decree. This they assigned to the appellant on the 12th June, 1908, three days before the expiration of their *ticca*. On the 22nd September, 1908, the assignee appellant took out execution. The respondent judgment-debtors contended that the appellant was not entitled to execute the decree, by reason of the provisions of section 148 (h) of the Bengal Tenancy Act, which runs as follows:—“Notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree, unless the landlord's interest in the land has become, and is, vested in him.” The application for execution was refused by both Courts on the authority of the decision, *Dwarika Nath Sen v. Peari Mohan Sen (1)*, and reported in short notes, p. XIX. This case appears to us in point, notwithstanding certain distinctions which are sought to be made, *viz.*, that there the assignment was after, and not before, the expiration of the term of the lease, and

* Reference to a Full Bench in Appeal from Order No. 469 of 1909.

there was a third party. The principle of that decision appears to be that the meaning of the word "landlord" in the phrase "unless the landlord's interest in the land, etc.," has the same limited significance as the term "landlord" in the preceding part of the clause. If this be so, then the word "landlord" in this case refers to the *ticcadars*, and as the *ticcadars'* or assignors' interest had expired, it was not vested in the appellant at the time of his application for execution. On the other hand, the learned pleader for the appellant relies on the decision *Mammotha Nath Mitter v. Rakhal Chandra Tewary* (1) where it was said that the section does not speak of the assignor's interest, but of the landlord's interest. It is contended on behalf of the appellant that the term "landlord" in the phrase cited means the person who at the date of execution is entitled to receive rent from the tenant, in whatsoever way such right may be vested in him, including the present case where the landlord, by the execution of the *ticca*, divested himself of the right to collect rent, which again became vested in him on the expiration of the *ticca*. This appears to us to be a reasonable view of the section, and to meet its policy which was, as we conceive it, to secure that strangers to the land should not be allowed to speculate in decrees for rent, and possibly harass the tenant, and that the only person who could execute was the person who, at the time of execution, was entitled by reason of a vested landlord's interest, to demand rent. The later decision sought to distinguish the authority on which the lower Courts have relied, on the ground that the determination of a lease for a term was different in its legal consequences from the purchase of a permanent tenure such as a *putni* and the annulment of a *darputni*. We are unable, however, to draw any distinction of principle between this and the earlier case, which appears to us to proceed on the ground that the landlord's interest in section 148 (h) means only the assignor or decree-holder's interest. We, therefore, refer to the Full Bench the question :—

Whether, by the term "landlord's interest," in section 148 (h) of the Bengal Tenancy Act, is meant only the assignor or decree-holder's interest, or the interest of a person entitled to receive rent from the tenant at the date of execution of the decree."

Babu Jogesh Chandra Ray (with him *Babu Biraj Mohan Majumdar*), for the appellant. My contention is that only the person entitled to receive rent from the tenant can execute the decree. That is the policy of law. The word "landlord" is defined in the Bengal Tenancy Act. The case of *Dwarika Nath Sen v. Peari*

(1) (1909) 14 C. W. N. 752.

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Mohan Sen (1) is not really applicable. In that case the landlord's interest was transferred to three persons—two being landlords and one a stranger. All three jointly applied for execution. The question might arise whether such a joint application was competent. *Manurattan Nath v. Hari Nath Das* (2) may throw some light on this point. The case of *Manmotha Nath Mitter v. Rakhal Chandra Tewary* (3) is correct in principle.

Mr. S. A. A. Asghur (with him *Babu Sarada Prasanna Ray* and *Maulvi Muhammad Yusuff*), for the respondents. It is no question of convenience. The exact construction of the section is to be considered. The interest of a particular individual is in question in section 148 (*h*). By the term "landlord's interest" is meant the interest of the person who assigns. If *A* assigns his interest to *B* for a term, and *B*'s interest expires, *C* (the tenant) is not a tenant of *A* after *B*'s term expired.

[HOLMWOOD J. Whose tenant is he then?]

Section 148 (*h*) is clear. In this case, only the decree was assigned.

[JENKINS C.J. But his interest also expired.]

The judgment of the Court (JENKINS C.J., HARRINGTON, STEPHEN, MOOKERJEE AND HOLMWOOD JJ.) was delivered by

JENKINS C.J. We are of opinion that by the term "landlord's interest" in section 148, clause (*h*) of the Bengal Tenancy Act is meant the interest of the person entitled to receive the rent from the tenant at the date of the application for the execution of the decree. The result is that the appeal is allowed, and the execution will proceed in the usual way.

(1) (1896) 1 C. W. N. 694.

(2) (1904) 1 C. L. J. 500.

(3) (1909) 14 C. W. N. 752.

The appellants are entitled to the costs of this Court, including the costs of this reference and the costs in the lower Appellate Court.

S. M.

Appeal allowed.

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CRIMINAL REVISION.

Before Sharfuddin and Core J.

PHANINDAR SINGH

v.

EMPEROR.*

1913
 Jan. 10.

Collector—Jurisdiction—Complaint to Collector of the District under s. 58(3) of the Bengal Tenancy Act (VIII of 1885)—Transfer of inquiry to Subdivisional Officer for disposal—Deputy Collector—Jurisdiction of Subdivisional Officer to hold such inquiry and to direct a prosecution for fabrication of false evidence—Bengal Tenancy Act, ss. 3(16), 58(3)—Government Notification of 19th September, 1910—Reg. IX of 1833 ss. 20 and 21—Criminal Procedure Code (Act V of 1898) s. 476.

Under s. 3(16) of the Bengal Tenancy Act, and Government Notification of the 19th September, 1910, a Subdivisional Officer is a "Collector" and is authorized to hold an inquiry under s. 58(3) of the Bengal Tenancy Act.

A Collector of the district has power, on complaint made to him, to transfer such inquiry for disposal to a Subdivisional Officer who is, under ss. 20 and 21 of Reg. IX of 1833, subordinate to the Collector, and is required to perform all the duties assigned to him by that functionary.

Where, therefore, a complaint under s. 58(3) of the Bengal Tenancy Act was made to the Collector of the district, and transferred by him for disposal to the Subdivisional Officer, who found that certain rent receipt books, filed in the course of the inquiry, had been fabricated :—

Held, that the latter had jurisdiction, under s. 476 of the Criminal Procedure Code, to direct a prosecution of the offenders for offences under ss. 193 and 196 of the Penal Code.

* Criminal Revision No. 1609 of 1912, against the order of A. R. Toplis, Subdivisional Officer of Barh, dated Oct. 14, 1912.