

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Jiban  
Krishna Roy v. Brojo Lal Sen, from the High  
Court of Judicature at Fort William in Bengal,  
delivered the 4th March 1903.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

SIR JOHN BONSER.

[*Delivered by Sir Andrew Scoble.*]

The question in this Appeal is as to the title to a half share of the estate of Chuck Bele Doorganugger in Bengal, which, prior to 1834, belonged to one Ram Sagore Mitter. Upon his death he was succeeded by his two daughters, Anundmoyi and Isaneswari ; and upon the death of the former, her son and his aunt Isaneswari divided the estate equally between themselves ; and Isaneswari continued to hold her half share until her death in February 1894. The Respondent now claims it as next heir to the estate of Ram Sagore according to the Hindu law in force in Bengal, while the Appellant claims as purchaser at a sale in execution of decrees for rent obtained against Isaneswari in 1883-84. And the point for determination is whether the purchaser at the sale acquired an absolute interest in the estate sold, or only such limited interest as Isaneswari took as her father's daughter.

Both Courts in India have found that the property in question was originally the estate of

Ram Sagore Mitter, and that on the death of Isaneswari the Respondent was the next heir, and these findings were not disputed before their Lordships. It is therefore only necessary to consider the circumstances of the case so far as they relate to the execution sale which is the foundation of the Appellant's claim.

The estate known as Chuck Bele Doorga-nugger is an under-tenure of a zemindari which is not specifically named, and in which there are several co-sharers. To the suits brought against Isaneswari in 1883-84 for arrears of rent only some of these co-sharers were parties, and although, in one of them, the Plaintiffs prayed that the amount decreed might be "recovered" "by the sale of the property in arrears," the decrees given were for money only. This was in accordance with the provisions of Bengal Act VIII. of 1869, by which the procedure in suits between landlords and tenants was at that time regulated. Section 64 enacts that when a decree for arrears of rent has been obtained by a co-sharer in a joint undivided estate, the under-tenure cannot be sold until the moveable property of the judgment-debtor has been sold, and proved insufficient to satisfy the decree. "In such case," the Section proceeds, "such under-tenure, if of the nature described in "Section 59" (that is to say, if by the title-deeds or the custom of the country it is transferable by sale) "may be seized and sold "in execution of such decree, according to the "ordinary procedure of the Court, and not in "the manner provided in the said Section, and "every such sale shall have such and the same "effect as the sale of any immoveable property "sold in execution of a decree, not being for "arrears of rent payable in respect thereof"; in other words, as if the sale were in execution of an ordinary money-decree, in which case, as

is established by a long series of decisions, only the right title and interest of the judgment-debtor passes. To make the tenure itself liable to sale in execution the special procedure required by the Act would be necessary, and all the co-sharers would have to be made parties to the suit. This course was not followed in the case under consideration, but the execution-sale was made under the ordinary conditions imposed by the Code of Civil Procedure.

The Subordinate Judge held that what was sold was not the interest of a Hindu widow (? daughter), but the estate which she represented. The learned Judges of the High Court, however, were of opinion that as "the suit for rent was brought against Isaneswari alone, and in respect of arrears which accrued due after her father's death, and as she was in enjoyment of the rents and profits of the chuck, the liability for rent ought to be regarded as her personal liability and ought not to be held as attaching to the reversion unless the landlords proceeded to bring the tenure itself to sale under the special provisions of the Rent Law." In this opinion their Lordships concur. The provisions of the Rent Law were devised for the protection of all parties interested in the tenure, and they would be defeated if fractional shareholders were allowed to evade them by the method adopted in this case.

It was properly pointed out to their Lordships by Mr. Bonerjee, the learned Counsel who appeared for the Respondent, that in awarding mesne profits "for the three years next preceding the institution of the suit," the High Court had lost sight of the fact that Isaneswari died on the 26th February 1894, and that the suit was instituted on the 27th July 1894, about five months after her death. The Decree must

therefore be amended so as to give mesne profits from the 26th February 1894, on which date the Respondent succeeded to the estate, until delivery of possession to him. Subject to this amendment their Lordships will humbly advise His Majesty that the Decree of the High Court should be confirmed, and this Appeal dismissed. The Appellant must pay the costs of the Appeal.

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