
(1926) 12 PAT CK 0013
In the Patna High Court

Ananta Charan Padhan and Others

APPELLANT

Vs

Nimai Bahubalendra and Others

RESPONDENT

Date of Decision : 01-12-1926

Acts Referred:

Bengal Tenancy Act, 1885 — Section 173

Citation : AIR 1927 Patna 177

Hon'ble Judges : Macpherson, J;Kulwant Sahay, J

Bench : Full Bench

Judgement

Kulwant Sahay, J.—Petitioners allege themselves to be the purchasers of a holding in execution of a mortgage decree. The holding was subsequently sold in execution of a rent-decree. The petitioners presented an application before the Deputy Collector purporting to be one u/s 227(3) of the Orissa Tenancy Act for setting aside the sale on the ground that the holding had been purchased by the judgment-debtor himself through another person, viz., the purchaser in execution of the rent-decree. This application has been dismissed by the Deputy Collector on the ground that it was barred by limitation under Article 166 of Schedule 1 to the Indian Limitation Act. The order of the Deputy Collector has been affirmed on appeal by the Collector.

2. The only question for determination in this case is whether the application is governed by Article 166 or by Article 181 of the Indian Limitation Act. Article 166 provides for applications under the Code of Civil Procedure, 1908, to set aside a sale in execution of a decree and the period of limitation is thirty days from the date of sale. It is contended on behalf of the petitioners that the present application was not an application under the Code of Civil Procedure, but it was an application under the special provisions of the Orissa Tenancy Act and, therefore, Article 166 has no application.

3.He contends that the article applicable is Article 181 which provides for applications for which no period of limitation is provided elsewhere in Schedule 1 to the Indian Limitation Act. It is clear that there is no other provision in the

Indian Limitation Act for an application like the one now under consideration. It would therefore follow that the article applicable would be Article 181.

4. In *Chandrama Rai v. Maharaja of Dumraon* [1916] 38 I.C. 209 the question was considered in relation to the provisions of Section 173 of the Bengal Tenancy Act which are similar to the provisions of Section 227 of the Orissa Tenancy Act, and it was held that the article applicable to an application u/s 173 of the Bengal Tenancy Act was Article 181 and not Article 166. This decision therefore supports the contention of the learned vakil for the petitioners. The learned Deputy Collector referred to the decision of the Calcutta High Court in *Haripada Haldar and Others Vs. Baradaprosad Roy Choudhury and Others*, . The decision in *Chandrama v. Maharaja of Dumraon* [1916] 38 I.C. 209 was distinguished in that case, and one of the reasons given was that this decision proceeded on a construction of the old Article 166 as it stood before the amendment by the Act of 1908. In this the learned Judges were clearly under a misapprehension. The decision in *Chandrama v. Maharaja of Dumraon* [1916] 38 I.C. 209 was on a construction of Article 166 as it stands at present and not as it stood before the present amendment. Another reason given was, that an application u/s 173 of the Bengal Tenancy Act would be an application u/s 47 of the Code of Civil Procedure, Section 47 of the Code of Civil Procedure, however, contemplates questions arising between the parties to the suit in which the decree was passed or their representatives.

6. In the present case the petitioners were not the parties to the suit, nor were they the representatives of the parties. Therefore, an application u/s 173 of the Bengal Tenancy Act. or Section 227 of the Orissa Tenancy Act cannot be considered to be an application u/s 47 of the Code of Civil Procedure. Sections 238 and 239 of the Orissa Tenancy Act provide for special periods of limitation as regards certain suits, appeals and applications specified in Schedule III of the Act.

7. The present application is not an application specified in Schedule III, and therefore the special rule of limitation laid down in the Orissa Tenancy Act has no application. Consequently the Limitation Act will apply and, on a consideration of the nature of the present application, I am of opinion that the proper Article applicable is Article 181 of Schedule 1 to the Indian Limitation Act. The application was, therefore, not barred by limitation.

8. The orders of the Courts below must be set aside and the case remanded for re-trial on merits. The petitioner's are entitled to the costs of this application.

Macpherson, J.

I agree.