

(1925) 05 PAT CK 0052
In the Patna High Court

Gosain Das Baishnab

APPELLANT

Vs

Gopal Singh and Others

RESPONDENT

Date of Decision : 18-05-1925

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 213, 258

Citation : 106 Ind. Cas. 430

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

Bench : Division Bench

Judgement

Kulwant Sahay, J.—This is an appeal by the defendant No. 1 and arises out of a suit brought by the plaintiff for setting aside a decree for arrears of rent and a sale in execution of the decree on ground of fraud and collusion.

2. The facts as alleged in the plaint are shortly these:

Defendants Nos. 2 to 4 are the superior landlords of Mauza Adaidah; defendants Nos. 5 to 16 were mokarraridars under defendants Nos. 2 to 4 and the rental payable by them was Rs. 120 odd and Rs. 13 3 odd was the cess.

3. It appears that on the 9th May, 1920, the plaintiff purchased a 4 annas 6 gandas out of the 16 annas mokarrari interest from some of the mokarraridar defendants. There was some defect in the deed of sale and fresh deed was executed in favour of the plaintiff on the 19th July, 1921. The landlords, namely, defendants Nos. 2 to 4 brought a suit for arrears of cesses due for the years 1324-1325 B.S. against defendants Nos. 5 to 16 and they obtained a decree on the 2nd April, 1921. In execution of this decree the mokarrari interest was put up for sale and was purchased by defendant No. 1 on the 20th October, 1921. There was a formal delivery of possession to defendant 1 in January, 1922. The plaintiff applied to the Deputy Collector to set aside the sale under the provisions of Section 213 of the Chota Nagpur Tenancy Act, This application was rejected and the order was confirmed on appeal by the Deputy Commissioner and the Commissioner. The plaintiff, therefore, brought the present suit for a declaration

that the decree was obtained by fraud and that the sale in execution of the decree was also obtained by fraud. The learned Munsif framed various issues, but on the application of the parties he proceeded to try issues Nos. 4 and 5 only which were the issues in bar of the suit. Issue No. 4 ran thus:

Has this Court jurisdiction to try this suit and is Section 258 of the Chota Nagpur Tenancy Act a bar to the maintainability of this suit and issue No. 5 was. "Is the suit barred by the principle of res judicata?"

4. The learned Munsif held that the suit was barred under the provisions of Section 258 of the Act and further that the suit was also barred by res judicata. Without deciding the other issues raised in the case the learned Munsif, on his decision of these two issues, dismissed the suit. There was an appeal by the plaintiff which was heard by the Subordinate Judge of Purulia. He has set aside the decree of the Munsif on a finding that the suit was not barred under the provisions of Section 258 of the Chota Nagpur Tenancy Act and that it was not barred by the principle of res judicata either. Against this decree the defendant No. 1 has come up in second appeal.

5. As regards the bar u/s 258 of the Chota Nagpur Tenancy Act it is clear that in so far as the plaint asks for setting aside the sale in execution of the decree, the claim is barred by Section 258. Section 213 of the Act provides for setting aside a sale on ground of material irregularity or fraud in publishing or conducting the sale. The learned Munsif appears to be under a misapprehension when he says that fraud is not one of the grounds upon which a sale can be set aside u/s 213. By the Amending Act VI of 1920 B. & C. the words "or fraud" have been inserted in Section 213 so as to make the fraud in publishing and conducting the sale one of the grounds for setting aside a sale. The question of fraud was, therefore, properly raised in the application for setting aside the sale and was decided by the Revenue Officer. u/s 214 no suit or application can be entertained in any Court to either set aside or to modify the effect of any sale made under Chap. XVI of the Chota Nagpur Tenancy Act except on the ground of fraud or want of jurisdiction. The fraud or want of jurisdiction contemplated ins. 258 is fraud or want of jurisdiction in the order passed u/s 213 refusing to set aside the sale. In my opinion the learned Munsif was right in holding that the claim of the plaintiff, in so far as it asked for setting aside the sale, was barred by Section 258 of the Chota Nagpur Tenancy Act. The suit, however, proceeds further and asks for a declaration that the decree obtained in the suit was itself fraudulent and collusive. The suit for realisation of the cesses appears to have been brought u/s 139 of the Chota Nagpur Tenancy Act and there are clear allegations in the plaint of the present suit that the decree obtained u/s 139 was by fraud on the part of the plaintiffs in that suit. Section 258 of the Chota Nagpur Tenancy Act contemplates that a decree passed u/s 139 can be questioned in a suit on the ground of fraud in obtaining the decree. There are clear allegations in the plaint of fraud and those allegations have to be enquired into. In my opinion the view taken by the learned Subordinate Judge on this point is correct and the order of

remand must stand and the suit will be tried on the issues as regards the fraud in obtaining the decree and other issues relating thereto.

6. The appeal is dismissed with costs.

Adami, J.

7. I agree.