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**(1925) 05 PAT CK 0029**  
**In the Patna High Court**

Gosain Das Baishnab

APPELLANT

Vs

Gopal Singh and Others

RESPONDENT

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**Date of Decision :** 18-05-1925

**Acts Referred:**

Chotanagpur Tenancy Act, 1908 — Section 213, 253, 258

**Citation :** AIR 1927 Patna 382

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

**Bench :** Full Bench

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**Judgement**

Kulwant Sahay, J.—This is an appeal by defendant 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 2 to 4 are the superior landlords of mauza Adaidah; defendants 5 to 16 were mokarraridars under defendants 2 to 4 and the rental payable by them was Rs. 120 odd and Rs. 13-3-0 odd was the cess.

3. It appears that on the 9th May 1920, the plaintiff purchased a four-annas six-gandas out of the sixteen-anna 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 cusses due for the years 1324-1325 B.S. against defendants 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 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, Chota Nagpur Tenancy Act. This application was rejected and the order was confirmed on appeal by the Deputy Commissioner and the Commissioner.

4. 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 lie proceeded to try issues 4 and 5 only which were the issues in bar of the suit. Issue 4 ran thus:

Has this Court jurisdiction to try this suit and is Section 253, Chota Nagpur Tenancy Act. a bar to the maintainability of this suit.

and issue 5 was.

the suit barred by the principle of res-judicata.

5. 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, Chota Nagpur Tenancy Act, and that it was not barred by the principle of res judicata either. Against this decree defendant 1 has come up in second appeal.

6. As regards the bar u/s 258, Chota Nagpur Tenancy Act, it is clear that in so far as the plaintiff asks for setting aside the sale in execution of the decree, the claim is barred by Section 253. 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 6, 1920, B. & O. 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. 16, Chota Nagpur Tenancy Act. except on the ground of fraud or want of jurisdiction.

7. The fraud or want of jurisdiction contemplated in Section 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, 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 realization of the cesses appear to have been brought u/s 139, 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, 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.

8. 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 tin 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.

9. The appeal is dismissed with costs.

Adami, J.

I agree.