

(1958) 03 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 368 of 1956

Korada Sukuta and Others

APPELLANT

Vs

Raghava Pati and Another

RESPONDENT

Date of Decision : 19-03-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7
Constitution of India, 1950 — Article 226 , 227
Orissa Tenants Protection Act, 1948 — Section 11 , 13

Citation : (1958) 24 CLT 285

Hon'ble Judges : Narasimham, C.J;Barman, J

Bench : Division Bench

Advocate : B.K. Pal, M.S. Ray and N.V. Ramdas, for the Appellant; H.G. Panda, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a petition under Articles 226 and 227 of the Constitution, against the order of the Member, Board of Revenue, dated the 4th. July 1956, affirming the appellate order passed by the Additional District Collector, Ganjam, on the 16th September, 1955.

2. There were three applications before the Rent Suit Deputy Collector of Berhampur, filed by the opposite party under the provisions of the Orissa Tenants' Protection Act. Those applications were fixed for hearing on the 12th. June 1954, but on that day the Petitioners (who were the Respondents before the Rent Suit Deputy Collector) failed to enter appearance and the applications were posted for hearing exparte on the 16th. June 1954. The cases were then adjourned to the 21st. June 19M on which date, before delivery of orders, the Petitioners applied to the Rent Sui t Deputy Collector for setting aside the exparte o der and for hearing the applications on merits. That Officer allowed the applications for restoration subject to payment of costs. An appeal Was filed against that order before the Additional District Collector, who, after examining

the merits of their applications for restoration, held that there was no sufficient ground for the non-appearance of the Petitioners before the Rent Suit Deputy Collector and therefore set aside the order of restoration passed by the Rent Suit Deputy Collector. The dispute was taken up before the Member, Board of Revenue, where the main question urged was that as the trial court purported to pass an order under Order 9 Rule 7 of the CPC which was not applicable under the provisions of that Code, the Additional District Collector had no jurisdiction to entertain the appeal and set aside the order of restoration. The Board of Revenue rejected this contention and hence the Petitioners have invoked the extraordinary jurisdiction of this Court.

3. I think the Board of Revenue has taken the correct view of the law. Doubtless, if the provisions of the CPC had, by their own force, applied to proceedings under the Orissa Tenants Protection Act, there would be some force in the contention of Mr. Ramdas, appearing for the Petitioners, that the provisions of Order 43 of the CPC dealing with appeals against orders also would apply. But as pointed out by the Board of Revenue, the provisions of that Code do not apply by their own force. They apply to proceedings under the Orissa Tenants Protection Act by virtue of Section 13 of that Act, read with Section 192 (2) of the Madras Estates Land Act, 1908. Moreover the proviso to the aforesaid Section 13 says that whenever there is any inconsistency between the provisions of the Orissa Tenants Protection Act and those of the Madras Estates Land Act, the former provisions shall prevail. Section 192 (2) of the Madras Estates Land Act further says that the CPC shall apply to all proceedings under that Act "subject to the other provisions of that Act". Hence the applicability of the CPC to all cases heard, under the Orissa Tenants Protection Act, will be subject to (1) the provisions of the Madras Estates Land Act, and (2) the provisions of the Orissa Tenants Protection Act and where there is a provision in either of these Acts which is repugnant to the provisions of the Code of Civil Procedure, the former will prevail. A right of appeal is expressly provided in Section 11 of the Orissa Tenants Protection Act, against any order passed by a Collector under that Act. It does not say that order must be a final order or else that it must be an order under any particular Section of that Act. Even interlocutory orders passed by a Collector under the Orissa Tenants Protection Act, would be appealable, to the prescribed authority. To this extent, therefore, the provisions of Order 43, CPC must be deemed to have been completely superseded. Doubtless, the provisions of Order 9, Rule 7, Code of Civil Procedure, would apply, not by their own force but by virtue of Section 13 of Orissa Tenants Protection Act read with Section 192 (2) of the Madras Estates Land Act.

4. The appellate court was therefore justified in entertaining the appeal and disposing of it according to law. There is no error of jurisdiction which would justify your interference with the order of the lower Court. The application is dismissed with costs, Hearing fee Rs. 100/-/- (Rupees One hundred only).

Barman, J.

5. I agree .

Application dismissed.