
(1925) 04 PAT CK 0003
In the Patna High Court

(Kumar) Rameswar Narayan Singh

APPELLANT

Vs

Mahabir Prasad and Others

RESPONDENT

Date of Decision : 29-04-1925

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 214, 231, 258

Citation : AIR 1926 Patna 47

Hon'ble Judges : Kulwant Sahay, J

Bench : Division Bench

Judgement

Kulwant Sahay, J.—This is an appeal by the defendant against the decision of the Subordinate Judge of Ranchi reversing the decision of the Munsif of Hazaribagh and decreeing the plaintiffs' suit. The suit was for setting aside a sale of a raiyati holding held under the provisions of the Chota Nagpur Tenancy Act. The sale was sought to set aside on the ground of fraud, The defendant who was the landlord and the purchaser in the execution sale denied that there was any fraud and contended that the suit was barred by limitation. The learned Munsif who triad the suit held that there was fraud on the part of the decree-holder and that the sale was vitiated on the ground of such fraud; he however, dismissed the suit on the ground of limitation. On appeal by the plaintiffs, the learned Subordinate Judge has held that the suit was not barred by limitation and has accordingly decreed the suit and set aside the sale, Against this decision the defendant has come up in Second Appeal.

2. The principal question for decision in this appeal is as to whether the suit was barred by limitation, The sale in execution of the decree obtained by the appellant took place on 3rd December 1917. The plaintiffs' case is that the entire amount due under the decree had been paid off and the appellant acted fraudulently in getting the sale confirmed, and that he came to know of the fraud for the first time on 11th November 1919, when possession was delivered to the appellant. The suit was instituted on 10th July 1920. The Munsif held that the period of limitation was one year and that the plaintiffs had knowledge of the

sale beyond one year from the date of the suit and that the suit was accordingly barred by limitation. He did not in his judgment state under what provision of the law he held the period of limitation to be one year. The learned Subordinate Judge on appeal was of opinion that the period of limitation applicable to the suit was the one provided for in Article 95, Schedule I, Lim. Act. It has been contended, however, on behalf of the appellant that the present suit was governed by Section 231, Chota Nagpur Tenancy Act, and that the period of limitation was one year from the date of the accrual of the cause of action and that upon the finding of the Munsif the cause of action accrued to the plaintiffs at least on 8th April 1918, if not earlier, and that the suit being instituted beyond one year from that date was barred by limitation. Now, in order to make the provisions of Section 231, applicable to the present suit it must first be established that the suit was one instituted under the Chota Nagpur Tenancy Act. The learned Subordinate Judge is of opinion that Section 231, has no application to the present case inasmuch as the suit was not one under the Act.

3. I am of opinion that the learned Subordinate Judge was right and that the present suit is not one under the Chota Nagpur Tenancy Act. Reliance has been placed by the learned vakil for the appellant upon the provisions of Sections 214 and 258, Chota Nagpur Tenancy Act and it has been contended that the present suit is one under the provisions of those sections.

4. I am of opinion that this contention is unsound. Section 214 bars a suit to set aside a sale under Ch. 16 of the Act except on the ground of fraud or want of jurisdiction. Section 258 contains a provision similar to that in Section 214. These sections do not create a right to institute a suit to set aside a sale of holding made under the Act. They bar the institution of such a suit except on the ground of fraud or want of jurisdiction. The right to institute a suit to set aside a sale has not been created but has been taken away under the provisions of these sections. The right exists in a person to bring a suit to set aside a sale under the general law and was not conferred under the provisions of the Chota Nagpur Tenancy Act and such right was taken away by these sections except the right to bring a suit on the ground of fraud or want of jurisdiction.

5. The present suit was, therefore not a suit instituted under the provisions of the Chota Nagpur Tenancy Act as contemplated by Section 231 of the Act; and consequently the period of limitation is not the one provided by that section but the one provided by the Limitation Act. I am, therefore, of opinion that the suit must be governed either by the provisions of Article 12 or by those of Article 95, Schedule I, Lim. Act. In my opinion the suit being for a relief on the ground of fraud the Article applicable is 95 and not Article 12, Lim. Act, and the period of limitation is therefore three years from the time when the fraud became known to the plaintiffs. In the present case the suit was brought within three years even from the date of the sale and was evidently within time.

6. It has next been argued that there was no fraud as alleged in the plaint. I am of opinion that the appellant cannot be allowed to raise this question in Second

Appeal. It was found by the Munsif that there was fraud on the part of the defendant and that finding was not challenged by the defendant before the Subordinate Judge as is expressly stated in the decision of the Subordinate Judge. It has been contended that the fraud alleged was not in bringing about the sale but in getting the sale confirmed after receipt of the entire amount of the decree; and it is pointed out that under the provisions of the Chota Nagpur Tenancy Act a sale is not required to be confirmed. No doubt, there is no provision in the Act for confirmation of sale and in *Lal Nilmani Nath Sahi Deo v. Rai Bahadur Baldeo Das Birla* AIR 1920 Pat 597 it was held by this Court that there was no provision in the Act for confirmation of a sale. Reference was made in that case to the expression "confirmation of sale" occurring in Clause (d), Section 209 of the Act but it is noticeable that the word "date" was substituted in this clause for the word "confirmation" by the Bihar and Orissa Act (5 of 1920) and the word "confirmation" now no longer occurs in this section. The question of fraud, however, was not raised by the appellant in the lower appellate Court, and I am of opinion that the appellant cannot be allowed to raise the question here in this Second Appeal. The only point argued before the Subordinate Judge was the question of limitation and this question appears to have been correctly decided.

7. This appeal is dismissed with costs.