

(1936) 01 PAT CK 0026

In the Patna High Court

(Maharaja) Pratap Udai Nath Sahi Deo

APPELLANT

Vs

Baraik Lal Sahi and Others

RESPONDENT

Date of Decision : 20-01-1936

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 182, 208, 210(2)

Citation : AIR 1936 Patna 615

Hon'ble Judges : Macpherson, J; Fazl Ali, J

Bench : Full Bench

Judgement

Macpherson, J.—In appeal No. 302 the Maharaja of Chota Nagpur assails the decision of the Judicial Commissioner affirming the finding of the Munsif of Ranchi that the application made by the appellant in 1934 for execution of his decree in a suit for rent obtained on 26th November 1925, in the Court of the Deputy Collector of Ranchi, was barred by limitation under the provisions of S.181, Chota Nagpur Tenancy Act. The decree was passed against defendants in a suit for the rent of the tenure consisting of village Fulsuri and half of Hurhuri. When execution u/s 208, Chota Nagpur Tenancy Act (hereafter designated the Act), was taken in the Court in which the decree was passed, the application was rejected on the ground that as all persons interested in the tenure had not been parties to the suit, the provision was not applicable. There upon, instead of applying u/s 210(2) of the Act, the decree-holder applied to the Deputy Commissioner of Ranchi for the transfer of the decree for execution to the Munsif of Ranchi, This application was apparently made in view of an obiter dictum in Chandra Nath Tiwari v. Pratap Udai Nath Sahi Deo 1914 Cal 611 to the effect that it was open to a decree-holder whose decree could not be executed as a rent decree to have it executed by the ordinary civil Court as a decree for money against the judgment-debtor; and that could be done if a proper application is presented to the civil Court competent to execute such a decree. Section 182, Chota Nagpur Tenancy Act, lays down:

A decree or order passed by a Deputy Commissioner under this Act may be

executed either by his own Court or by any other prescribed Court.

2. Notification No. 2704 T.R., dated 21st October 1909, prescribes that a decree or order passed by the Deputy Commissioner may be executed either by his own Court or by any Court to which the Deputy Commissioner of the district transfers the application for execution. The Deputy Commissioner of Ranchi doubted, not without reason, whether the Court (other than his own Court) referred to in the notification included the Court of a Munsif, meaning thereby a civil Court as distinguished from the revenue Courts contemplated by the Act and rejected the decree-holder's application for transfer to the Munsif. The decree-holder then presented his application for execution direct to the Court of the Munsif and on his fourth application presented in 1934 the order now impugned was passed rejecting his claim that in the civil Court he was entitled to a limitation of twelve years. The question of jurisdiction was not considered. The appeal must fail on various grounds. The most obvious of them is that the Munsif had no jurisdiction. The Deputy Commissioner of Ranchi had not transferred the decree to the Court of the Munsif. The Munsif of Ranchi is indeed ex officio a Deputy Collector, but it was never contended that the decree had been transferred to him as Deputy Collector and the proceedings in execution were in fact conducted throughout on the civil side and not on the revenue side. Now u/s 38, Civil P.C:

A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

3. Manifestly the Munsif of Ranchi had even as a civil Court no jurisdiction to execute a decree which he had not passed and which had not been transferred to him. Apart from that the Deputy Commissioner appears, as already indicated, to have jurisdiction under the notification to transfer only to Courts under the Act. Again on the question of limitation Section 181 lays down:

No application for the execution of a decree or order passed by the Deputy Commissioner under this Act shall be entertained unless such application be made within three years from (a) the date on which the decree or order is signed.

4. It was contended that a decree is not passed under the Act unless it is what is sometimes called a rent decree, that is such a decree as is capable of execution u/s 208. But there is no basis for an interpretation that a decree is not passed under the Act unless it is capable of execution by the special method set out in that section. The Act, like Bengal Act 1 of 1879, is a complete code in itself and it contemplates that all decrees passed by the Deputy Commissioner in suits for arrears of rent are decrees passed under the Act irrespective of the manner in which such decrees may be executed. If the decree cannot be executed u/s 208, the decree-holder may with the permission of the Deputy Commissioner proceed against any other property moveable or Immovable of the judgment debtor, a special procedure adapted from the CPC being prescribed by Section 2.10(3) for executions in which the decree-holder is not entitled to the highly favourable procedure of Section 208. Finally as the decree was passed under the Act

(though it is one not entitled to the most favoured procedure in execution), the application in 1934 was clearly barred u/s 181. Even if the decree could have been executed in a civil Court by transfer, it seems doubtful whether operation of the more liberal provisions as to limitation obtaining therein) would have been attracted. The appeal fails and is dismissed.

Appeal from Appellate Order

No. 316 of 1934.

5. Mr. B.C. De for the same appellant stated that respondent 1 is dead and he would ordinarily proceed against the others, but that if the decision in M.A. 302 of 1934 is against him, he will not press the appeal. Appeal No. 302 has been dismissed. This appeal is accordingly dismissed ex parte without costs.

Fazl Ali, J.

6. I agree.