

(1968) 07 OHC CK 0020
In the Orissa High Court
Case No : M.A. No. 78 of 1966

Narasingh Singh Lal Another

APPELLANT

Vs

Sri Rama Krishna Deo

RESPONDENT

Date of Decision : 24-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Orissa Estates Abolition Act, 1951 — Section 18, 18(1), 18(4), 3, 3A

Citation : (1968) 34 CLT 1364

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : Y.S.N. Murty, for the Appellant; P.V.B. Rao, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, J.—Ram Krishna Deo, Raja of Jeypore, obtained a decree against the Appellants (judgment-debtors) for arrears of cess. When the decree was put to execution, the judgment-debtors raised objection u/s 47, CPC that the decree was not executable in view of the provisions of Section 5(p) and Sub-sections (1) (a) and (4) of Section 18 of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as the Act). The Courts below overruled this objection. Against the Appellate order, this miscellaneous appeal has been filed.

2. Mr. Murty traversed the identical grounds and this necessitates an examination of the scope of the aforesaid sections.

Under Section 3(11) of the Madras Estates Land Act, 1908 (hereinafter referred to as the Madras Act), "cess" is included within the definition of "rent". u/s 5(1) of the Madras Act, the rent of ryoti land together with any interest which may be due in respect thereof shall be a first charge upon the holding and upon the produce of the holding or any part thereof. It is contended by the judgment-debtors that Section 18, Sub-sections (1)(a) and (4) of the Act debar the claim under the decree being executable in a Civil Court. Section 18, Sub-sections (1)

(a) and (4) of the Act run thus:

Section 18(1)(a) Every creditor, whose debt is secured by the mortgage of, or in a charge on any estate or estates or part thereof, vested in the State Government u/s 3, or Section 3-A may, within six months from the date of such vesting or from the date on which such creditor is dispossessed under the provisions of Clause (h) of Section 5, or within three months from the date of appointment of the claims Officer, whichever date is later, notify in the prescribed manner his claim in writing to a Claims Officer to be appointed by the State Government for the purpose of determining the amount of debt legally and justly payable to each such creditor in respect of his claim.

... ..

(4) Every claim of the nature referred to in Sub-section (1) which is not duly notified to the Claims Officer within the time and in the manner mentioned in the said sub-section shall be barred:

Provided that, when the Claims Officer is satisfied that the claimant was prevented by any sufficient cause from complying with the provisions of the said sub-section, he may admit his claim within a further period of two months from the expiration of the said period of six months or three months as the case may be.

Section 5(e) of the Act lays down that no suit shall lie in any Civil Court in respect of any money due from such Intermediary the payment of which is secured by a mortgage of or is a charge on such estate and all suits, executions and other proceedings in respect of the mortgage or charge which may be pending on the date of vesting shall be dropped.

Sections 5 and 18 of the Act read together lead to the conclusion that the claim under the decree was a charge on the estate and the validity of such a claim is to be examined by the State Government and no Civil suit lies in respect of the claim, and if there be any proceeding, it should be dropped.

3. It is however to be noted that the decree for arrears of cess was in respect of a period prior to the coming into force of the Act. u/s 49(1)(iii) of the Act, nothing contained in this Act shall in any way affect the right of any Intermediary to recover any arrears of rent, cesses or other dues which accrued before the date of vesting and the same shall, notwithstanding anything contained in this Act, be recoverable as here to before by the Intermediary entitled thereto. This section, therefore, saves the decree from being barred u/s 5(e) read with Section 18 of the Act.

4. Mr. Murty's contention has no force and the appeal is dismissed. In the circumstances, there will be no order as to costs of this Court.