

(1953) 02 GAU CK 0010
In the Gauhati High Court
Case No : Civil Revision No. 130 of 1952

Nripendra Kumar Ray

APPELLANT

Vs

Kularam Das and Another

RESPONDENT

Date of Decision : 23-02-1953

Acts Referred:

Assam Adhiars Protection and Regulation Act, 1948 — Section 9
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (1953) 02 GAU CK 0010

Hon'ble Judges : Deka, J

Bench : Single Bench

Advocate : K.P. Bhattacharjee, for the Appellant; N.M. Dam, for the Respondent

Judgement

Deka, J.—This Rule was obtained by the landlord in relation to a proceeding under the Assam Adhiars Protection and Regulation Act, 1948 (Assam Act 12 of 1948) against the order of the Deputy Commissioner of Silchar, dated 10-6-52. The landlord started a proceeding under the Assam Adhiars Act (which we might so term for the sake of brevity) against the opposite parties for realisation of paddy rent for the years 1353 to 1355 B.S. and the learned Extra Assistant Commissioner acting as the Revenue Officer decreed the landlord's claim in full. On appeal, the learned Deputy Commissioner set aside the order of the Revenue Officer and dismissed the claim with a very short judgment wherein he seems to say that he was not satisfied that all the necessary parties were before the Court or that there was a proper partition of the property left by the predecessor-in-interest of the petitioning landlord with whom the Respondents had entered into a deed of agreement and not with the Petitioner.

2. The first point to be considered is whether a proceeding in revision lies under Section.115, CPC against an appellate order of the learned Deputy Commissioner exercising the powers under the Adhiars Act. Section 9 of the Act says that such an order of the Deputy Commissioner is final. Mr. Bhattacharjee appearing for

the Petitioner has relied on the Full Bench decision of the Patna High Court reported in-- Arjun Rautara Vs. Maharaja Krishna Chandra Gajpati Narayan Deo, wherein it has been held by the majority of the Judges in a proceeding under the Orissa Tenancy Act the Deputy Commissioner exercising his power under that Act, though primarily a Revenue Officer, the order passed by him as appellate Court may be revised by the High Court u/s 115, Code of Civil Procedure.

I am, however, faced with a Full Bench decision of this Court reported in--"Jagat Chandra De v. Gopalram Das" AIR 1952 Gau 166 (B)" to which I had been a party and it was decided therein that no revision would be competent against an order passed by the Deputy Commissioner in exercise of his appellate powers u/s 9, Assam Adhiars Act but the High Court can interfere under Article 227 of the Constitution in exercise of its extraordinary jurisdiction only when there has been absence, excess or abuse of jurisdiction on the part of the Deputy Commissioner but that power is not a substitute for revisional powers enjoyed by the High Court u/s 115, CPC In this case, I cannot say that the Deputy Commissioner acted in excess of his jurisdiction or abused the powers vested in him by the Adhiars Act and as such, I see no reason to interfere with the order moved against. Assuming for argument's sake that a revision u/s 115, CPC would be competent, even then there is nothing to show that the lower Court acted in excess or absence of its jurisdiction vested in it by law or acted with illegality or material irregularity that might bring the case within the purview of Section 115, CPC In the present case, the order passed by the Deputy Commissioner will therefore stand and the Rule stands discharged.