
(1939) 04 PAT CK 0015
In the Patna High Court

Puni Sethi and Others

APPELLANT

Vs

Gangadhar Patro and Others

RESPONDENT

Date of Decision : 18-04-1939

Acts Referred:

Bengal Tenancy Act, 1885 — Section 153

Citation : AIR 1940 Patna 249

Hon'ble Judges : Manohar Lall, J;Fazl Ali, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is an application in revision on behalf of the defendants against an order of the Collector of Balasore dated 4th March 1937 by which he in appeal reversed the decision of the Rent Suit Deputy Collector of Bhadrak dated 21st December 1936 by which the suit of the respondents, which was instituted for recovery of certain sum said to be due to the plaintiffs for rents, was dismissed. The plaintiffs' case in short was that for two years, 1342 and 1343F, the defendants had taken 2.53 acres of land belonging to the plaintiffs in village Bahudarada, pergana Senaut on produce rent under an oral settlement in Magh 1342; the defendants did not pay the produce rent but promised to send Rs. 37-10-0 from Calcutta for 1342 Fasli but failed to carry out the promise.

2. In the year 1343 there was again a failure to pay the dues to the plaintiffs and when the crop of that year was harvested the plaintiff stopped its removal from the field with the result that the defendant and the plaintiff agreed to have a punchayat. The punchayat settled that the defendant should pay Rs. 35 to the plaintiff for 1342 but it did not decide anything regarding the crop of 1343. It was alleged that the defendant paid Rs. 26 to the plaintiff and removed the crop, but as the dues of the plaintiff remained unsatisfied he instituted the suit giving rise to the present proceedings. The defendant denied all the allegations of the plaintiff and asserted that he never took any oral settlement of the land in suit nor was he ever in possession thereof during the years in suit.

3. The trial Court held that there was no satisfactory evidence regarding the

allegation of the plaintiff that the defendant had taken an oral settlement of the land, that he never promised to send Rs. 37-10-0 from Calcutta, that the story of the panchayat was a myth and that there was no evidence which could be relied upon to prove the payment of Rs. 26. In short he held that there was no satisfactory evidence regarding any of the allegations of the plaintiff. As to the possession of the land by the defendant for the years in suit the learned Deputy Collector held that he was unable to accept the case of the plaintiff that the defendant had possession of the land as a tenant.

4. The plaintiff then appealed to the learned Collector who pointed out that the only issue in the case was whether the relationship of landlord and tenant existed between the plaintiff and defendant. Upon a careful perusal of the evidence upon the record he disagreed with the findings of the trial Court and held that

nothing has been shown on the record of the evidence to justify the conclusion that the alleged contract on the strength of which the defendants cultivated the land for two years was a myth.

5. He therefore decreed the suit of the plaintiff as claimed. The defendants have moved this Court to exercise our powers of revision. It is contended by the learned Advocate for the respondents that this Court has no jurisdiction to interfere With the Order of the learned Collector by reason of the provisions of Section 204, Orissa Tenancy Act of 1913. He contends that the order sought to be revised is not an order which decides any question whether rent is pay-able for the land or not nor does it decide a question relating to title to land or some interest therein as between parties to the suit and that as the subject-matter of the claim in dispute is admittedly below Rs. 100 in value the appeal rightly lay to the Collector, that no further revision to the High Court is provided by the Section against the order of the Collector passed in such cases. Reliance was placed by the learned advocate on the case in *Shilabati Devi v. Roderigues* (1908) 35 Cal 547 and on the case in *Ganga Singh Vs. Raghunandan Das and Others*, . But these cases are of no assistance in deciding the question before us as they depended upon the construction of Section 153, Ben. Ten. Act, where the words are not "as between parties to the suit" as in the corresponding Section of the Orissa Tenancy Act but "as between parties having conflicting claims thereto."

6. The case which is nearer to the present case is *Gopi Biswal v. Ramchandra Sahu* AIR (1916) Pat 257. In that case the suit had been instituted by the plaintiff, who was the purchaser at a revenue sale of a portion of touzi No. 2837 to recover from the defendant, who was the proprietor of a four anna share in a sarbarakari tenure included in that touzi, arrears of rent. The defendants had pleaded that no rent" was payable by them on the ground that by an arrangement with the plaintiff's predecessor in interest they never paid any rent for this tenure. On these facts the issue framed was "Does the relationship of landlord and tenant exist between the parties?" The learned Judges of the High Court pointed out that upon the pleading the issue which arose was whether this sarbarakari tenure is liable to pay any rent or not and therefore the Collector had

no jurisdiction to entertain an appeal against the decision of the Deputy Collector as Clause 2 of Section 204, Orissa Tenancy Act, was clear that where a Deputy Collector decides that the rent is payable for land or not an appeal under Sub-section (3) ought to have been preferred to the District Judge and not to the Collector and, therefore.

7. They held that the plaintiff having failed to come to the District Judge the Collector had no jurisdiction to entertain the appeal and set aside the judgment and decree passed by the Deputy Collector and directed that the memorandum of appeal should be returned by the Collector for presentation to the District Judge.

In the present case the learned Deputy Collector or the Collector has not decided whether rent is payable for the land or not nor does the Collector by the order under revision or the Deputy Collector decide any question relating to title to land or any interest therein.

8. The only matter which the Collector in disagreement with the Deputy Collector has decided is that the defendant was in possession of the land upon the oral contract for two years, the title of the plaintiff to the land was never in controversy nor was the interest of the defendant in the land ever put in issue. The question which now arises for decision is whether this Court has any power to revise the order of the Collector passed in appeal in case in which the subject-matter is valued at less than Rs. 100 and to which the provisions of Clause 3 of Section 204 of the Orissa Tenancy Act apply. In my opinion the Collector in these circumstances cannot be held to be subordinate to this Court. He is amenable to the jurisdiction of this Court if he decides any question mentioned in Clause 2 when his decision becomes appealable to the District Judge or High Court.

9. That situation does not arise in the present case. But the learned Advocate for the petitioner argued that this Court always has the power to revise orders of Subordinate Courts and as the Collector is sometimes subordinate to this Court when deciding Cases of the character now before us but beyond Rupees 100, he must be taken to be subordinate to this Court for all purposes. I do not agree with this contention. If this argument were correct we could revise under our powers u/s 115, Civil P.C., an order of the Collector passed under the Excise Act or Embankment Act for instance. But this obviously cannot be done.

10. In each case the Court must examine what is the nature of the dispute that the Deputy Collector or the Collector is deciding under the Orissa Tenancy Act and the result of the examination will decide, after applying the provisions of the various clauses of Section 204, of the Orissa Tenancy Act, whether in that case this Court can exercise its powers of revision. Applying these considerations to the present case I am clearly of the opinion that this Court has no power to interfere in revision with the order passed by the Collector, who was competent to entertain the appeal and decide it on its merits. I would dismiss this application with costs. Hearing fee one gold mohur. The rule is discharged.

Fazl Ali, J.

11. I agree.