
(1917) 03 PAT CK 0002
In the Patna High Court

Ram Protap Marwari

APPELLANT

Vs

Jhoomak Jha and Others

RESPONDENT

Date of Decision : 02-03-1917

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : AIR 1917 Patna 525 : 39 Ind. Cas. 943

Hon'ble Judges : Roe, J;Jwala Prasad, J

Bench : Division Bench

Judgement

Roe, J.—The point for decision in this case is whether an encumbrance has been annulled in accordance with the provisions of Section 167 in the following circumstances:

2. The land in suit is situated in the district of Monghyr. At the time when the decree-holder-respondent wished to annul the encumbrance in question, the practice was for petitions addressed to the Magistrate and Collector of the District respectively to be placed in two boxes. These two boxes were under the orders of the Collector opened each day by the Joint Magistrate, who was directed to initial them and hand over to the peshkar. In accordance with these orders the Joint Magistrate of the district took the petition made u/s 167, initialled it and wrote on it "To Tenancy Act Deputy Collector." The Tenancy Act Deputy Collector thereupon saw that the necessary notices were issued and signed the final result of the proceedings as for the Collector. The learned Subordinate Judge has held that this was a valid annulment;

3. We are asked in appeal to say that the only person who can order the issue of a notice u/s 167 would be the Collector by his own hand or by some officer appointed by the Local Government to exercise the powers of a Collector under the Bengal Tenancy Act in the district of Monghyr. With this view I am not in agreement, nor am I able to find any authority for the proposition stated. The cases of Mohabut Singh v. Umahil Fatima 28 C. 66, Girish Chandra Guha v. Khagendra Nath 9 Ind. Cas. 1001 : 16 C.W.N. 64 : 13 C.L.J 613 are authorities

only for the proposition that a petition for annulment of an encumbrance must be filed in the Court of the Collector and not in the Court of a Deputy Collector or the Sub-Divisional Officer.

4. It is obvious from the history of the case that the petition in this case was filed in the Court of the Collector of the District of Monghyr. The view taken in *Ramdhon Dey v. Surja Narain Mukhopadhyaya* 2 C.L.J. 99 and *Girish Chandra Guha v. Khagendra Nath* 9 Ind. Cas. 1001 ; 16 C.W.N. 64 : 13 C.L.J 613 was that before saying that the notices were not properly served the Court would have to hold that the Deputy Collector acted in excess of the powers conferred upon him. The mere circumstance that the notice was signed by the Deputy Collector would not invalidate it if he acted on behalf of the Collector. It is quite clear that the Joint Magistrate had power to distribute on behalf of the Collector the petitions found in the box set aside for petitions addressed to the Collector. The fact that there was an officer in the district who was known by the title of Tenancy Act Deputy Collector is sufficient guarantee that the Collector had authorised him to act on his behalf in matters of a routine nature, such as the issue of notices prescribed by law. I would hold that the encumbrance in this case has been properly annulled. The appeal should be dismissed with costs.

Jwala Prasad, J.

5. The application for annulment of the encumbrance was apparently made to the Collector of the District. That is all that is required by Section 167 for annulment of encumbrances. The fact that the notice was issued by the Tenancy Act Deputy Collector will not invalidate the proceedings taken u/s 167. It must be presumed, until the contrary is shown, that all the acts done in connection with Section 167 were done in accordance with law and procedure and were valid u/s 114(e), Evidence Act. I agree that the appeal should be dismissed.