

(1914) 01 CAL CK 0004
In the Calcutta High Court

Case No : Appeal from Order No. 398 of 1913 With Rule No. 1250 of 1913

Thakur Madan Mohan Nath Sahi Deo

APPELLANT

Vs

Maharaja Pratap Udai Nath Sahi Deo

RESPONDENT

Date of Decision : 29-01-1914

Acts Referred:

Citation : (1914) 01 CAL CK 0004

Judgement

1. We have before us an appeal from an order and a rule which have arisen under the following circumstances. The Respondent who is also the Opposite Party in the Rule obtained a decree for rent against the Appellant, Petitioner, on the 19th April 1905, under the Chota Nagpur Tenancy Act of 1879. After prolonged litigation he obtained an order from the Deputy Collector of Ranchi, dated the 2nd September 1912, that certain villages should be sold in execution of his decree. On appeal to this Court it was decided that an appeal lay, and that the plaint did not specify correctly the property in respect of which rent was due, as it should have done according to sec. 47 of the Chota Nagpur Landlord and Tenant Procedure Act of 1879. The result was that the sale proclamation, which, if correctly drawn up, would, by force of sec. 5 of the Bengal Rent Recovery Act of 1865, specify the village, etc., in which the lands were situated in the words of the plaint, would properly be defective. This Court accordingly set aside the order before it in which the provisions of the Rent Recovery Act had not been observed, and acting on an agreement between the parties directed that the description in the plaint should be amended, and ordered, that after such amendment had taken place the sale proclamation should be drawn up afresh, The case was "remitted to the Court that tried the original suit" : the Plaintiff was to be "at liberty to submit a correct description of the tenure" : if there was any controversy as to the accuracy of the description the Court was to adjudicate upon the matter.* The case was accordingly remitted to the Deputy Commissioner of Ranchi, who overruled an objection that the High Court had no jurisdiction to make the order we have quoted, allowed the amendment of the plaint, and left it to the decree-holder to take further steps. An appeal has been

filed against this order which is supported on four grounds. In the first place it is said that there has been no adjudication on the correctness of the description furnished by the decree-holder of the property in respect of which execution is sought. We have carefully considered the terms of the order and the observation furnished to us by the Judge from this point of view, but it is not necessary that we should now adjudicate on it. The second ground is that the application for amendment was made to the Deputy Commissioner by whom the amendment was ordered, whereas the order of this Court was that the case was remitted to the Court which tried the original suit, that is the Deputy Collector. The result is that the order of this Court has not been obeyed, and whatever may have been the general jurisdiction of the Deputy Commissioner he had no power to deal with this particular matter except by remitting the case to the Deputy Collector. This objection is therefore valid. The third ground is that the application for the amendment of the plaint is out of time by force of Or. 6, r. 28, which provides that when an order for amendment of the pleadings in a suit is made and no time is limited by the order for that purpose, the amendment must be made within fourteen days of the order. Here no time is so limited by the order of this Court and the plaint was not amended until 17th May 1913, while the order that it should be amended was made on the 13th March 1913. This argument however fails, as the order of this Court was not made under Or. 6 but under the power of the Court to order that certain steps should be taken by the parties to enable the differences between them to be properly settled.

2. The fourth ground is that it is of no avail to amend the plaint if the decree is not amended as it is the decree and not the plaint that is to be executed. This would be so, were the case one under the general law; but this case falls within the scope of sec. 5 of the Rent Recovery Act already referred to, and, therefore, apart from the order of this Court, the validity of which cannot be questioned, there is no necessity for an amendment of the decree. The result is that the order of the Court below must be set aside and this case must go back, in the words of this Court on a former occasion, to the Court which tried the original suit, that is, to the Deputy Collector of Ranchi, in order that he may act in accordance with the previous order of this Court. Any application that is made before him for amendment of the plaint must be made without undue delay; but will not be subject to Order 6 rule 28. For purposes of execution it is not necessary that an amendment should be made in the decree to correspond to that made in the plaint.

3. The Deputy Commissioner of Ranchi in forwarding an explanation that was asked for by this Court has commented on the protracted litigation that has taken place in this matter. It is with much regret that we find ourselves obliged to order further proceedings. If we had power to cut matters short we would certainly do so; but we have not. It is with very great regret that we find that the law is as powerless as we are. We leave each side to pay their own costs. In view of the judgment we have just delivered it is not necessary to go on with the Rule which is therefore discharged.