

(1943) 03 PAT CK 0007
In the Patna High Court

Umakanta Nayak

APPELLANT

Vs

Gyanendra Prasad Bose and Another

RESPONDENT

Date of Decision : 11-03-1943

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1945 Patna 128

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—This application is by the defendant and is directed against an order of the Collector made u/s 204(5), Orissa Tenancy Act. The application arose out of a suit by the plaintiff to recover what has been called rent from the defendant on the basis of a document executed by the defendant in plaintiff's favour, which has been called an ijara kabuliat. By this document the defendant acquired the right to collect rent from the cultivators in consideration of an agreement by him to pay to the plaintiff a sum of Rs. 1201-7-0 annually for the years 1342, 1343 and 1344. This sum was payable by the defendant to the plaintiff irrespective of the amount of rent collected by the defendant from the cultivators. On failure to make this annual payment within the stipulated time the plaintiff was declared entitled to put up for sale certain of the defendant's properties which were hypothecated by the document as security for the due performance of the defendant's obligation to pay to the plaintiff the annual sum that I have mentioned. The defence to the suit was that the rent Court in which the suit was instituted had no jurisdiction to entertain it. The Deputy Collector overruled this contention holding that the suit was governed either by Clause (a) or Clause (b) of Section 193, Tenancy Act. The Collector was then moved under Clause (5) "of Section 204 but declined to interfere. A preliminary objection was taken by the plaintiff in this Court that the defendant was not entitled to come to this Court for revision of the Collector's order after the Collector himself refused to exercise the revisional powers which he possesses u/s 204(5). The Collector is admittedly a Court subordinate to this Court within the meaning of Section 115,

Civil P. C, and" therefore, this Court has power to revise an order made by him u/s 204 (5), whether the order be one accepting the order of the subordinate Court or refusing to do so.

2. The substantial question in this case is as to the status of the defendant under the ijara kabuliat to which I have already referred. If the defendant's status be that of a mere rent collector and the suit be for money received by him for the plaintiff as the latter's agent, then the suit is governed by Section 193 (b) and the rent Court has jurisdiction to entertain it. But in my view the present suit cannot be so regarded. It is not a suit for money received by the defendant for the plaintiff. The money recoverable by the defendant from the cultivators was for himself. The plaintiff was in no way interested in the money or had any right to it. His right was to obtain a fixed, sum from the defendant and that fixed sum was recoverable by him whether the defendant succeeded in realising any money from the cultivators or not. I therefore agree with the defence contention to this extent that the suit is not governed by Clause (b) of Section 193. But the very acceptance of this contention in the circumstances of the present case brings the suit within Clause (a). If the position be as, in my opinion, it is, that the defendant has acquired from the plaintiff the right to collect rent from the cultivators in consideration of a fixed annual sum payable to the plaintiff, then the status of the defendant is that of a tenure-holder under the plaintiff although there are restrictions on his powers in the deed itself which are not always to be found in documents creating tenures. The essential status of the defendant, however, is that of a tenureholder, that is to say, a person who has acquired from the proprietor a right to hold land for the purposes of collecting rent. In this view of the matter, the order of the Court below must be affirmed and this rule discharged with costs.