

APPELLATE CIVIL.

Before Adami and Das, J.J.

THAKUR GOBIND NATH SAHI DEO

1922.

Oct., 30.

v.

MAHARAJA PRATAP UDAI NATH SAHI DEO.*

Code of Civil Procedure, 1908 (Act V of 1908), Order XXII, rule 12—application to set aside sale, whether is an application in execution of a decree—Chota Nagpur Tenancy Act, 1908 (Ben. Act VI of 1908), sections 213, 230 and 265(3)(a)—Sale—application to set aside—death of applicant—substitution—limitation.

By reason of sections 230 and 265(3)(a) of the Chota Nagpur Tenancy Act, 1908, the provisions of the Limitation Act, 1908, relating to the period of time within which an application for substitution must be made, apply when a person who has applied under section 213 to set aside a sale dies and an application for substitution is made.

An application for setting aside an execution sale is not an application "in execution of a decree or order" within the meaning of Order XXII, rule 12, and, therefore, the other provisions of Order XXII apply to such an application.

Chaudhury Jagadish Missir v. Chaudhury Sureswar Missir(1), followed.

The facts of the case material to this report were as follows:—

In execution of a decree obtained by the Maharaja of Chota Nagpur for arrears of rent of a tenure against Madan Mohan Sahi Deo, the former caused the latter's tenure to be sold. Madan Mohan and certain other

* Appeals from Original Order No. 48 of 1921, from an order of J. E. F. Pereira, Esqr., Deputy Collector of Ranchi, dated the 24th November, 1920.

(1) (1921) 6 Pat. L. J. 253.

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persons thereupon applied separately under section 213 of the Chota Nagpur Tenancy Act to have the sale set aside. In April, 1919, pending the disposal of the applications, Madan Mohan died, and on the 12th October, 1920, Gobind Nath Sahi Deo applied to have his name substituted for that of the deceased applicant, and to continue the proceeding commenced by the latter. The first Court held that Madan Mohan's application had abated, and that no further order could be recorded on his application.

The applicant appealed to the High Court.

K. N. Chowdhury (with him *Guru Saran Prasad*), for the appellant: Order XXII deals with death, marriage and insolvency and does not apply to a case such as this. Assuming that it would apply generally rule 12 provides that it shall not apply to execution proceedings. An application to set aside a sale is a proceeding in execution because it falls under Order XXI, which is headed "Execution of Decrees," etc. "Relating to execution" in section 225 (c) of the Chota Nagpur Tenancy Act, includes an order passed in respect of a payment for the purpose of setting aside a sale [*Panchanan Mahta v. Kanai Mahta* (1) and *Babri Ritu Koer v. Alakhdeo Narain Singh* (2), referred to]. An application merely for the purpose of bringing on the record the legal representative of a deceased decree-holder or judgment-debtor is not provided for in the Code of Civil Procedure. The application of Gobinda Nath Sahi Deo, the present objector, was an application for continuing the proceedings under section 213, Chota Nagpur Tenancy Act, and cannot be treated as an application for substitution and no question of limitation arises either under Order XXII or Article 176.

Hasan Imam (with him *P. K. Sen, Susil Madhab Mullick, Sailendra Nath Palit* and *Bankim Chandra De*), for the respondents: The respondents' contentions appear sufficiently from the judgment.

(1) (1917) 2 Pat. L. J. 153.

(2) (1919) 4 Pat. L. J. 330.

DAS, J.—These analogous appeals come before us from the judgment of the Deputy Collector of Ranchi, dated the 24th November, 1920, and arise out of certain applications made by the appellant in each of these appeals for setting aside a sale under section 213, Chota Nagpur Tenancy Act. The facts are these: The Maharaja of Chota Nagpur obtained a decree for recovery of arrears of rent against one Madan Mohan Sahi Deo in respect of a tenure, and, in execution of that decree, caused the tenure to be sold, and it was in fact sold to certain persons who may, for convenience, be called the Birla Brothers. Thereupon Madan Mohan and certain other persons, who are the appellants in appeals other than Appeal No. 48 of 1921, presented separate applications under the provision of section 213 of the Chota Nagpur Tenancy Act for setting aside the sale held in execution of the rent decree. Pending the disposal of his application, Madan Mohan died in April, 1919. On the 12th October, 1920, Gobind Nath Sahi Deo, the appellant in Appeal No. 48 of 1921, applied for substitution of his name and for continuing the proceedings commenced by Madan Mohan for setting aside the sale. The question raised in Appeal No. 48 of 1921 is, whether the application has not abated by reason of the fact that steps were not taken to have substitution effected within the time allowed by law. The learned Deputy Collector has come to the conclusion that the application presented by Madan Mohan has abated and that no further order can be recorded in that application. I am of opinion that the order of the learned Deputy Collector is right and must be affirmed.

By the express direction of section 265 of the Chota Nagpur Tenancy Act, the provisions of the Code of Civil Procedure relating to substitution and addition of parties apply to the cases before the Deputy Commissioner. Order XXII, rule 3, of the Code, is then a part of the Chota Nagpur Tenancy Act. Section 230 of the Chota Nagpur Tenancy Act provides that the provision of the Indian Limitation Act shall, so far

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as they are not inconsistent with the Act, apply to all suits, appeals and applications under the Chota Nagpur Tenancy Act. If we apply the provisions of the Limitation Act to the application made by the applicant for substitution there is no doubt that that application was made considerably out of time. But it is urged that, if the provisions of Order XXII apply to a case before the Deputy Collector, the provision of rule 12 of that Order equally applies and that consequently the question of substitution does not apply to proceedings in execution of a decree or order. It may be conceded that the question of substitution does not arise in proceedings for execution of a decree or order; but the question still remains whether an application for setting aside a sale held in pursuance of an application for execution of a decree is an application for execution of a decree or order.

In the case of *Choudhury Jagadish Missir v. Choudhury Sureswar Missir*⁽¹⁾, I expressed the opinion that an application for setting aside a sale cannot be regarded as an application in a proceeding in execution of a decree or order. My conclusion was based on the view that when the sale of the property attached in execution has been completed, and the purchase money has been paid into Court, nothing more remains to be done in respect of the execution of the decree as against that property. I adhere to the view which I expressed in the case to which I have referred; and I must hold that the application presented by Madan Mohan Sahi Deo abated before the application for substitution was presented by the appellant. I must accordingly dismiss Appeal No. 48 of 1921 with costs.

ADAMI, J.—I agree.

Appeal dismissed.

(1) (1921) 6 P. L. J. 253.