

is that the decision does determine the right of the party to appeal in formâ pauperis and therefore it is a final adjudication of that right. That however is not the class of right with regard to which finality must exist in order to make it a final decree or order. Every order in one sense finally determines some right of the parties whether it be a right to appeal or whether it be a right to have an extension of time or whether it be any other kind of right; but before one can have a final decree or order there must be some final adjudication upon the subject matter of the suit, that is to say the rights claimed by one party in the suit itself and denied by the other. The rights claimed in the present suit are rights as to a partition of what is alleged to be joint property. The order passed by the Division Bench of this court in no way determined anything connected with those rights. For these reasons I think that this application must be rejected. The respondent is entitled to his costs of this application.

FOSTER, J.—I agree.

APPELLATE CIVIL.

Before Das and Adami, J.J.

MADHAB PODDAR

v.

LALL SINGH BHUMIJ.*

1926.

June, 2.

Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), sections 46, 139A—suit for ejectment of under-tenant, maintainability of.

No suit for the ejectment of an under-tenant by his immediate landlord lies in the civil court under section 139A read with section 46(4), Chota Nagpur Tenancy Act, 1908.

Bholanath Mandal v. Chhota Gunaram Mighi (1), distinguished.

* Appeal from Appellate Decree no. 426 of 1923, from a decision of W. H. Boyce, Esq., I.C.S., District Judge of Manbhum, dated the 8th February 1923, affirming a decision of Babu Badri Narayan Rai, Additional Munsif of Purulia, dated the 27th November 1922.

(1) (1914) 23 Ind. Cas. 407.

1926.

Appeal by the defendant.

MADHAB
PODDAR

The facts of the case material to this report are stated in the judgment of Adami, J.

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The following provisions of the Chota Nagpur Tenancy Act, 1908, are referred to in the judgment.

Section 46(4).—At any time within three years after the expiration of the period for which a raiyat has, under this section, transferred his right in his holding or any portion thereof, the Deputy Commissioner may, in his discretion, on the application of the raiyat, put the raiyat into possession of such holding or portion in the prescribed manner.

139. The following suits and applications shall be cognizable by the Deputy Commissioner, and shall be instituted and tried or heard under the provisions of this Act, and shall not be cognizable in any court, except as otherwise provided in this Act, namely,—

* * * * *

(4) all suits [and applications] ⁽¹⁾ under this Act to eject any tenant of agricultural land or to cancel any lease of agricultural land;

* * * * *

(8) all suits and applications in respect of which jurisdiction is conferred by this Act on the Deputy Commissioner.

139A. Subject to the provisions of Chapter XII [i.e. sections 80 to 100 (Record-of-rights and Settlement of Rents)], no court shall entertain any suit concerning any matter in respect of which an application is cognizable by the Deputy Commissioner under section 139, and the decision of the Deputy Commissioner on any such application shall, subject to the provisions of this Act, be final.

S. C. Mazumdar, for the appellant.

A. K. Roy and S. S. P. Singh, for the respondent.

(1) The words " and applications " were added by section 38(4) of Chota Nagpur Tenancy (Amendment) Act, 1920 (Bihar and Orissa Act VI of 1920), which came into force in 1924.

ADAMI, J.—The plaintiff in this suit sought to eject the defendant from the lands asserting that he was an occupancy raiyat and the defendant was an under-raiyat under him. The defendant set up a claim of occupancy right on the basis of two leases, each of a permanent nature, granted by the father of the plaintiff and the mother of the plaintiff, respectively, in the years 1301 and 1304.

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The Munsif decreed the suit in part, but on appeal to the District Judge the appeal was dismissed.

A point was taken before the lower Appellate Court that no suit was maintainable, having in view the provisions of section 139, clause (4), of the Chota Nagpur Tenancy Act. The learned District Judge found that clause (4) of section 139 only bars suits which are under the Act and that there was no section in the Act providing for the ejectment of an under-tenant. The Courts have found that the defendant was merely an under-tenant.

Before us the only point taken is that the suit was in fact not maintainable by the Civil Court; it should have been instituted in the Court of the Deputy Commissioner. It is true that there is no specific section in the Chota Nagpur Tenancy Act providing for the ejectment of an under-tenant, though there are provisions for the ejectment of occupancy raiyats and non-occupancy raiyats. There is, however, a provision, namely, section 46, sub-section (4), which allows a tenant to approach the Deputy Commissioner with an application to eject an under-tenant at any time within three years after the expiration of the period for which the raiyat has transferred his right in the holding or any portion thereof. The section allows the Deputy Commissioner, in his discretion, on the application of a raiyat, to put the raiyat into possession of such holding or a portion thereof in the prescribed manner. It was open, therefore, to the plaintiff in this case to have applied to the Deputy Commissioner to take action under section 46, sub-section (4). At the time the suit was instituted,

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section 139 had not been amended by section 38 of the Act of 1920. That section 38 only came into force in 1924, and clause (4) of section 139, at the time that the suit was brought referred only to suits under the Act to eject a tenant from agricultural land; there was no mention in that clause of applications.

The Court below, however, has failed to notice section 139A which was introduced into the Act by the Amending Act of 1920 and came into force before the suit was instituted. Under section 139A no court may entertain a suit concerning a matter in respect of which an application is cognizable by a Deputy Commissioner under section 139. Now, section 46 gives the Deputy Commissioner jurisdiction to deal with an application for ejectment of an under-tenant. This has been held by Teunon, J., in *Bholanath Mandal v. Chhota Gunaram Mighi* ⁽¹⁾. At the time when that judgment was passed the Act of 1908 had not been amended by the Act of 1920, so that the provisions of section 139A could not be taken into consideration by Teunon, J., and those provisions altogether alter the position. It was, however, decided in that case that section 46, sub-section (4), covers the case of the ejectment of an under-tenant by a tenant.

Under section 46, then, an application for the ejectment of an under-tenant was cognizable by the Deputy Commissioner and under clause (8) of section 139, as it stood before the amendment and as it still stands, an application under section 48 is an application cognizable by the Deputy Commissioner. Thus it seems clear that under the terms of section 139A, no suit could be brought in the Civil Court for the ejectment of an under-tenant by his immediate landlord. In this view, then, this appeal must succeed and the decree of the lower Courts must be set aside with costs in all the Courts.

DAS, J.—I agree.

Appeal allowed.