

APPELLATE CIVIL.

Before Macpherson and Agarwala, JJ.

RAJA SRI SRI JYOTI PRASAD SINGH DEO BAHADUR

1933.

v.

TARA SANKAR CHATTERJI.*

Aug. 2.

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), sections 208 and 210(b)—decree effective against only a part of the tenancy interest—sale of tenancy, whether without jurisdiction—sale, whether binds the interest of any of the judgment-debtors against whom the decree was valid.

A sale under section 208, Chota Nagpur Tenancy Act, 1908, is only valid when held in execution of a decree for the rent of the tenancy obtained against the whole of the tenancy interest.

Where the decree was effective against only a part of the tenancy interest and did not affect the interest of the minor tenants who were sued as defendants in the suit, and the whole tenancy was sold in execution under section 208.

Held, (i) that the property was sold as a whole and either the sale of the whole property was valid or not binding at all;

(ii) that the sale under section 208 was entirely without jurisdiction and that it did not affect the interest of any of the judgment-debtors even though a sale of their interest under section 210(b) might have been valid.

Jagdishwar Dayal Singh v. Pathak Dwarka Singh(1), followed.

Appeal by the defendant.

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

J. C. Sinha and *B. B. Ghosh*, for the appellant.

N. N. Rai, for the respondents.

MACPHERSON, J.—The appellant who is the landlord of village Dumdumi in the Raghunathpur

* Appeal from Appellate Decree no. 196 of 1931, from a decision of H. R. Meredith, Esq., I.C.S., District Judge of Manbhum, dated the 4th December, 1930, confirming a decision of Babu Kshetra Mohan Kumar, Munsif of Raghunathpur, dated the 14th June, 1929.

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munsifi of the district of Manbhūm, sued the plaintiffs-respondents and two others for the cess of a six-annas share in the village which these plaintiffs hold. He obtained decree which he executed under section 208 of the Chota Nagpur Tenancy Act, 1908, as a rent decree and on sale of the tenancy, purchased it at auction. The suit out of which this second appeal has arisen, was brought by the plaintiffs, the Chattarjis, to set aside the ex parte decree and the sale on the ground of fraud and want of jurisdiction.

MACPHER-
SON, J.

The Courts below have granted all the reliefs prayed for except that the ex parte rent decree was vacated only in so far as plaintiffs nos. 1 to 3 were concerned.

The facts found are that the plaintiffs 1 to 3 were minors when they were sued as defendants in the suit in the rent court, and that accordingly the decree passed in that suit being effective only against some of the persons interested in the tenancy, could not be executed under section 208 of the Act but at most under section 210(b) against the major defendants 4 to 8 under which the right, title and interest of those judgment-debtors could be sold by the procedure laid down for execution of a money decree. It has been held by the Courts below that the sale under section 208 which was a sale of the tenancy, was without jurisdiction and did not operate to transfer the tenancy or even the right, title and interest of judgment-debtors 4 to 8 which might have been sold under section 210(b) or indeed anything whatsoever.

On behalf of the landlord-appellant it is urged that the sale in execution of the decree is not void but is binding so far as the interest of the judgment-debtors, who were defendants 4 to 8, is concerned.

In my opinion the submission is wholly untenable. The sale under section 208 was entirely without jurisdiction for the reason already given that the decree

upon the basis of which it was held, was against only a part of the tenancy interest whereas a sale under section 208 is only valid when held in execution of a decree for the rent of the tenancy obtained against the whole of the tenancy interest. The suggestion that such a sale, though not valid in respect of the tenancy, should at least bind the interest of those defendants judgment-debtors against whom the decree for cess was valid, will not bear examination for a moment. The effect of a sale under section 208 has recently been considered by their Lordships of the Privy Council in *Jagdishwar Dayal Singh v. Pathak Dwarka Singh*⁽¹⁾. It was there held that a sale on a decree for rent which did not include the whole tenancy interest was not a sale under section 208 so as to affect the subordinate interests which were under section 16 of the Bengal Rent Recovery (Under-tenures) Act, 1865, liable to cancellation upon a valid sale under that section. It was further held that neither section 214 nor any other provision of the Chota Nagpur Tenancy Act, 1908, operated to prevent the civil court from entertaining a suit in this regard. As the sale under section 208 was ultra vires, their Lordships pointed out that "to take advantage of section 214 the appellant must first establish that the sale was a sale made under Chapter XVI of the Act which includes sections 135 to 229, which in effect is a question of jurisdiction". "Under Chapter XVI of the Act", they proceeded, "a statutory jurisdiction is conferred on the Revenue Courts, but that jurisdiction must be exercised within the statutory powers conferred. If then, as already stated, it is not competent to order a sale of the tenure under section 208 unless the whole interests in the tenure are represented before the Court, it is clear that the order for sale of the tenure in the present case was ultra vires of the Revenue Court, and it follows that the sale was not 'made under this chapter' and was outside the jurisdiction of that Court". The sale of

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the tenancy under section 208 being without jurisdiction did not affect the interest of any of the judgment-debtors even though a sale of their interest under section 210(b) might have been valid. The property was sold as a whole and either the sale of the whole property was valid or not binding at all. The sale cannot be split up in the manner desired by the appellant.

Upon this view the judgments under appeal are correct and I would dismiss this appeal with costs.

AGARWALA, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Macpherson and Agarwala, JJ.

RAJA SHIVA PRASAD SINGH

v.

BHUBAN MAHATO.*

1933.

July, 26.
Aug., 3.

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908). section 139 (5), 139A and 231—amending Act VI of 1920—suit for declaration of title with consequential relief for possession—jurisdiction of Civil Courts to try such suit, whether barred—rule, whether applicable to cases where institution of suit or even cause of action had been subsequent to amendment of section 139 (5)—limitation—section 231, applicability of—amendment of section 139 (5) and introduction of section 139A, effect of—old law, whether restored.

Held, on a review of Janardan Acharjee v. Hardhan Acharjee(1), Asman Singh v. Shaikh Obeedooddeen(2), Khetra Nath Ghattak v. Peru Bauri(3), Akhouri Parmeshwari

* Appeal from Appellate Decree no. 22 of 1931, from a decision of Babu Gajadhar Prasad, Subordinate Judge of Dhanbad, dated the 31st July, 1930, affirming a decision of Babu Naresh Chandra Ray, Munsif of Dhanbad, dated the 22nd November, 1929.

(1) (1867) 9 W. R. (Civil) 513, F. B.

(2) (1875) 23 W. R. (Civil) 460.

(3) (1911) 15 Cal. W. N. 387.