

APPELLATE CIVIL.*Before James and Dhaule, JJ.*

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August, 23.

v,

SUDARSAN BHAGAT.*

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), sections 208 and 213—reversioner to the husband of a Hindu widow, whether entitled to maintain an application under section 213—applicant, duty of, to show that he was owner in possession immediately before sale and that his application was not barred by limitation—sale under section 208 void—right, title and interest of parties to proceedings, whether passes by the sale.

In order that a person should be entitled to prefer an objection under section 213 of the Chota Nagpur Tenancy Act, 1908, the applicant must demonstrate that he is the person who owned the property sold immediately before the sale, and also that his application is not barred by limitation.

A right of succession as reversioner to the husband of a Hindu widow is merely a spes successionis, and the expectant reversioner has no vested interest so long as the widow lives, so that he cannot be regarded as the owner in possession immediately before the sale, within the meaning of section 213.

When partition has been made by metes and bounds, whether by the Civil Court or by private arrangement, the owner of one separate patti is no longer the owner of the other, even though there may be a joint liability for rent.

Quaere : Whether, upon the sale of a tenure under section 208 of the Chota Nagpur Tenancy, 1908, the right, title and interest of the parties to the proceeding passes by the sale, when the sale itself is ultra vires by reason of the fact that the whole of the interests in the tenure were not represented before the Court?

* Appeal from Appellate Order no. 147 of 1936, from an order of F. F. Madan, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 20th May, 1936, reversing that of Babu M. S. Mukherjee, Deputy Collector of Giridih, dated the 2nd January, 1936.

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Jagdishwar Dayal Singh v. Pathak Dwarka Singh(1),
*Raja Sri Sri Jyoti Prasad Singh Deo Bahadur v. Tara Sankar
Chatterji*(2) and *Chandra Nath Tewari v. Protap Udai Nath
Sahi*(3), referred to.

Appeal by the auction-purchaser.

The facts of the case material to this report are set out in the judgment of James, J.

G. C. Mukarji, for the appellant,

Mahabir Prasad and L. K. Chowdhury, for the respondents.

JAMES, J.—This is a second appeal under section 224 of the Chota Nagpur Tenancy Act from the appellate order of the Judicial Commissioner made under section 215(3) of the Act. On the 10th of May, 1895, the zamindar of Palganj granted a thika of mauza Manjhiladih for a term of forty-seven years to two brothers Kali Charan Bhagat and Ram Prasad Bhagat at an annual rent with cesses of Rs. 115/4. When the record-of-rights was prepared in 1915 the tenure was in possession of Ram Prasad Bhagat and the widow of Kali Charan, holding equal shares in severalty, for which separate khewats were prepared, with a shamilat khewat for lands which were then waste which had not been divided. Under section 13 of the Chota Nagpur Tenancy Act the landlord was not obliged to recognise the subdivision of the tenure; and it would appear that in 1915 no such recognition had been made. In 1931 the landlord jointly sued Sudersan Bhagat and his brothers, sons of Ram Prasad Bhagat, with Musammam Mankumari, widow of Kali Charan Bhagat for rent of the tenure. Sudersan Bhagat defended the suit, denying that he was liable for more than half the rent and alleging that he had paid Rs. 57/10 for his half share of the tenure to the landlord. That suit did not reach

(1) (1933) I. L. R. 12 Pat. 626, P. C.

(2) (1933) I. L. R. 12 Pat. 799.

(3) (1913) 18 Cal. W. N. 170.

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the stage of decree as the claim was settled out of court. In 1933 the landlord sued Sudersan Bhagat and Musammat Mankumari separately for their shares in a collective suit under section 140 of the Chota Nagpur Tenancy Act, when it appears that Musammat Mankumari in respect of her share was in arrears for only one kist of 1340 Fs. to the extent of Rs. 28/13; while Sudersan Bhagat was in arrears for the whole of 1339 and a kist of 1340, so that the total claim against him was Rs. 87/7. The suit was decreed; and it appears that in due course the landlord's claim was satisfied. In 1935 the landlord again sued the pattidars separately for arrears of rent; and in execution of his decree against Musammat Mankumari he brought to sale her patti which was described in khewat no. 2/2 of the record-of-rights. The sale was confirmed on the 31st of October, 1935. On the 10th of December Sudersan Bhagat preferred an objection under section 214 of the Chota Nagpur Tenancy Act on the ground that he should have been a necessary party to the proceeding. The objection was disallowed by the Deputy Collector who found no substance in it. Sudersan Bhagat appealed to the Judicial Commissioner who allowed the appeal and set aside the sale. The learned Judicial Commissioner remarked that there was no documentary evidence of division of the tenure and that the half share had been sold for an inadequate price to the detriment of the appellant whose reversionary interest had thus been destroyed.

Mr. G. C. Mukharji on behalf of the appellants argues that there is no documentary evidence whatever nor any evidence at all of the existence of the tenure otherwise than as divided by partition into two defined pattis. He also argues that in any view of the matter, the order of the Judicial Commissioner setting aside the sale could not be justified, because the right, title and interest of Musammat Mankumari would have passed to the purchaser; and that the Deputy Collector had no jurisdiction to entertain the

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application under section 213 unless he found that the application was made within the period of limitation prescribed by the section. There is no such finding in the decision of the Judicial Commissioner.

On the question of whether the right, title and interest of Musammat Mankumari passed by the sale under section 208 of the Chota Nagpur Tenancy Act, Mr. Mukharji addressed the Court at some length; and it must be admitted that the question is one of some difficulty. The learned Judicial Commissioner relied upon the decision of the Judicial Committee in *Jagdishwar Dayal Singh v. Dwarka Singh*(¹) in which it was held that in order that a purchaser might be empowered to annul the encumbrances under section 208 it was necessary that every co-sharer in the tenure must be joined as defendant in the proceeding. That decision was followed by this Court in *Jyoti Prasad Singh v. Tarasankar Chattarji*(²), when it was regarded as implying that unless the whole of the interests in the tenure were represented before the court, an order for sale of the tenure under section 208 was ultra vires, and the right, title and interest of the parties to the proceeding could not be conveyed by the sale. In delivering the decision of the Privy Council in the earlier case Lord Thankerton referred with approval to the decision in *Chandra Nath Tewari v. Protap Udai Nath*(³) for the purpose of considering whether the purchaser in the case before the Judicial Committee could annul encumbrances. In *Chandra Nath Tewari's* case(³) it was held that a decree against persons who did not represent the entire tenure could not be executed under section 208 of the Chota Nagpur Tenancy Act, but it could be executed as a money decree in the civil court; and the citation of this case together with Lord Thankerton's remark that the sale of the tenure was ultra vires of the revenue court

(1) (1933) I. L. R. 12 Pat. 626, P. C.

(2) (1933) I. L. R. 12 Pat. 799.

(3) (1933) 18 Cal. W. N. 170.

would appear to give justification for the decision of this Court in the later case. Mr. Mukharji draws attention to Lord Thankerton's remark that "the decree is thus only apt to attach the interest of the defendants in the tenure, and is no sufficient warrant for a sale of the whole tenure under section 208" as implying that the interest of those tenure-holders who had been parties to the suit was liable under the decree. On the principle of *Chandra Nath Tewari's* case⁽¹⁾ that interest was liable under the decree, but it could not pass by a sale under section 208 of the Chota Nagpur Tenancy Act. It did in fact pass as a result of the decision of this Court in *Jagadiswar Dayal Singh v. Dwarka Singh*⁽²⁾; but the question of whether the right, title and interest of those defendants would pass by the sale did not come under consideration because there was no contest on that point. In the case of *Jagdishwar Dayal Singh v. Dwarka Singh*⁽²⁾ the superior landlord had granted a khorposh tenure, which was in the hands of four co-sharers, three of whom, defendants 2, 3 and 4 of the suit, held an eight annas share, while Musammatt Shiva Kumari Kuer, defendant no. 5 held the remaining eight annas share. One of the villages of the khorposh grant had been settled by the khorposhdars with the family of Dwarka Singh. The khorposh tenure was brought to sale under section 208 of the Chota Nagpur Tenancy Act and purchased by the superior landlord who proceeded to annul the mukarrari tenure of Dwarka Singh's family. The mukarraridars instituted a suit in which the ultimate decision was that in *Jagdiswar Dayal Singh v. Dwarka Singh*⁽²⁾, praying for an injunction against the superior landlord restraining him from attempting to take possession of any part of mauza Maran which formed the plaintiff's mukarrari grant. The khorposhdars were joined as defendants in the suit,

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but none of them contested it, so that the only contest was between the encumbrancer and the superior landlord. It was held that since all the tenure-holders were not impleaded in the rent suit, the sale of the tenure was not a valid sale under section 208 of the Chota Nagpur Tenancy Act and so the proprietor when he purchased in execution had no power to annul the khorposhdar's mukarrari grant. But the plaintiff's suit was decreed without any modification, and one of the reliefs claimed was that the court might hold that by virtue of the purchase made at auction sale the superior landlord had acquired no right but the share and interest of defendants 2—4 in respect of receiving the mukarrari rent. It would, therefore, appear that as between the mukarraridar and the defendants of that suit, he is obliged to pay rent, half to the auction purchaser and half to Musammatt Shiva Kumari Kuer, so that the actual effect of the decree in the suit was that the right, title and interest of the actual defendants in the rent suit passed by the sale under section 208, subject to encumbrances created by the tenure-holders; and it cannot be said that the sale was completely annulled by the final decree in the suit. But that question, as I have said, did not come under consideration, because defendants 2 to 5 of the suit did not enter appearance; and if defendants 2 to 4 did not object to the plaintiffs' paying half the mukarrari rent to defendant no. 1, there was no reason why anybody else should object.

The question actually does not arise in the present appeal. It was necessary in order that Sudarsan Bhagat should be entitled to prefer an objection under section 213 of the Chota Nagpur Tenancy Act that he should demonstrate that he was the person who owned the property sold immediately before the sale, and also that his application was not barred by limitation. The finding of the Judicial Commissioner is to some extent contradictory, because he finds that the half share was sold,

ignoring the appellant's reversionary right; but if his right in respect of this half share is merely that of a reversioner, then he could not be regarded as the owner in possession immediately before the sale. A right of succession as reversioner to the husband of a Hindu widow is merely a spes successionis, and the expectant reversioner has no vested interest so long as the widow lives, so that he could not be regarded as the owner of the half tenure in that capacity. When partition has been made by metes and bounds, whether by the civil court or by private arrangement, the owner of one separate patti is no longer the owner of the other, even though there may be a joint liability for rent; and in the present case the joint liability for rent continued only so long as the landlord refused under section 13 of the Chota Nagpur Tenancy Act to recognise the subdivision of the tenure between the families of the two brothers. That subdivision was recognised in 1933 and Sudersan Bhagat no longer had any present interest in Musammat Mankumari's patti. The view of the Deputy Collector was correct that the holders of the patti described in khewat no. 2/1 were not necessary parties in a suit for rent against the holder of the patti described in khewat no. 2/2 and the sale held under section 208 of the Act was valid.

Mr. Mahabir Prasad on behalf of the objector Sudersan Bhagat suggests that the sale under section 208 of the Chota Nagpur Tenancy Act cannot be held to be valid, because only part of the tenure was put up for sale, since the shamilat area contained in khewat no. 2/3 was omitted. In *Kumar Ramyad Singh v. Chhedia Barhi*⁽¹⁾ a part of the holding was illegally exempted from sale; but there objection was taken by the decreeholder that the court had no power arbitrarily to exempt from sale a portion of a tenure or holding. Sudersan Bhagat can hardly object to the sale of Musammat Mankumari Kuer's patti after

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subdivision of the tenure and apportionment of the rent on the ground that the property described in what would have been the *hawalgi lagan khewat*, if apportionment of rent had been made before the preparation of the record-of-rights, must also be brought to sale.

The appeal is allowed with costs, the order of the Judicial Commissioner is set aside and the order of the Deputy Collector is restored.

DHAVLE, J.—I agree.

Appeal allowed.

S. A. K.

REVISIONAL CRIMINAL.

Before Varma and Rowland, JJ.

KUNJO CHAUDHARY

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 476 and 476B—appellate court, whether empowered to order a remand—provision of section 476B, whether exhaustive—failure to appeal against order resulting in complaint under section 476—accused, whether entitled to question the legality of complaint after conviction.

[The provision of section 476B, Code of Criminal Procedure, 1898, as to the powers of the appellate court not being exhaustive, the appellate court has power to order a remand and to direct the trial court to make a preliminary enquiry to find out if there are sufficient materials to file a complaint.]

* Criminal Revision no. 193 of 1937, against an order of H. Whittaker, Esq., I.C.S., Sessions Judge, Monghyr, dated the 3rd March, 1937, affirming that of K. M. Kunar, Esq., Assistant Sessions Judge, Bhagalpur, dated the 23rd December, 1936.

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