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Blair, J.J. said, "Where articles are found in a house belonging to a joint family in such place or places as several persons living in the house may have access to, there is no presumption as to possession and control that those articles are in the possession and control of any other person than the house-master". The decision of Bennet, J. in *Sikhdar's* case⁽¹⁾ was commented on by Pullan and Thom, J.J. in *Kaul Ahir v. Emperor*⁽²⁾, where their Lordships were not prepared to agree with the view taken by him. In the absence of proof in the present case that the room in which the weapon was kept was in the exclusive or particular possession of any member of the family, I am not prepared to hold that it can be inferred that the weapon was in the possession of any other person than the head of the family, namely, the petitioner Mangar. I would, therefore, discharge the rule so far as this petitioner is concerned and confirm it with respect to petitioners Hulas Koiri and Balal Koiri whose convictions and sentences are set aside.

MADAN, J.—I agree.

Application of Hulas and Balal allowed.

Application of Mangar dismissed.

APPELLATE CIVIL.

Before Agarwala and Madan, J.J.

JAINANDAN RAM TEWARI

v.

RURIA URAON*

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), sections 208, 212 and 214—deposit of decretal amount after the statutory period, effect of—setting aside of sale if without jurisdiction—Bengal Tenancy Act, 1885 (Act VIII of 1885), section 174.

*Appeal from Appellate Decree no. 771 of 1935, from a decision of Babu Khetra Nath Singh, Subordinate Judge of Ranchi, dated the 30th May, 1933, confirming a decision of Babu Nirmal Chandra Ghosh, Munsif of Ranchi, dated the 9th September, 1932.

(1) (1932) A. I. R. (All.) 441.

(2) (1933) A. I. R. (All.) 441.

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Where the holding of certain tenants was sold in execution of a rent decree under section 208 of the Chota Nagpur Tenancy Act and the tenants deposited the amount due, but two days after the statutory period had expired under section 212 of the Act and the sale was set aside. The landlord brought the present suit for a declaration that the order setting aside the sale was without jurisdiction and void and the courts below held that the order setting aside the sale was *ultra vires* but the suit was barred under section 214(b) of the Act.

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Held, (i) that section 174 of the Bengal Tenancy Act is analogous to section 212 of the Chota Nagpur Tenancy Act and the deposit made under section 212 after the expiry of the statutory period was of no avail and the order setting aside the sale was without jurisdiction.

Lachmi Ojha v. Maharaj Kumar Ram Ran Bijay Prasad Singh(1), followed.

Section 214(b) bars a suit to set aside an order passed under section 212 but the application of section 212 is confined to the statutory period of 30 days and a court passing an invalid order after that period cannot be said to be acting under that section.

Section 214(b) constitutes no bar to the inherent right of the civil court to set aside a decree or order obtained by fraud or passed without jurisdiction and this right is expressly recognised in section 258 of the Chota Nagpur Tenancy Act.

Kumar Rameshwar Narain Singh v. Mahabir Prasad(2), relied on.

Appeal by the plaintiffs.

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

The case was in the first instance heard by Wort, J. who referred it to a Division Bench by the following judgment:—

WORT, J.—I propose in this case to refer the matter to a Divisional Bench under the proviso to rule 1 of Chapter II of the Rules of the High Court.

(1) (1934) I. L. R. 13 Pat. 641.

(2) (1926) I. L. R. 5 Pat. 759.

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The appeal arises out of an action by the plaintiff claiming a declaration that the order of the Deputy Collector, dated the 18th of January setting aside an auction sale was without jurisdiction and that the purchase made by the plaintiff was valid, that he had a subsisting right to the property the subject-matter of the sale, and that he was therefore the owner of the disputed lands. Shortly stated, the facts are these. The sale of the holding took place on the 17th of December, 1931. The 16th of January, 1932, was the last day for deposit under section 212 of the Chota Nagpur Tenancy Act. The judgment-debtor, however, came forward on the 18th of January, 1932, and deposited the money with the result that the Deputy Collector made an order setting aside the sale. It is under those circumstances that the action was brought, and both the Courts below have decided against the plaintiff.

The main question, and indeed the only question that arises, is whether the action is not barred by the provisions of section 214 of the Chota Nagpur Tenancy Act. The authorities relied upon by Mr. Banerji who appears on behalf of the plaintiff-appellant, the respondent not being represented, is in the first instance *Lachmi Ojhi v. Maharaj Kumar Ram Ran Bijay Prasad Singh*(1) where a Division Bench of this Court held that an order made setting aside a sale as a result of a deposit not contemplated by section 174 of the Bengal Tenancy Act was an order made without jurisdiction. It is argued therefore that, as the deposit in this case was made two days after the lapse of the thirty days under section 212, the order of the Deputy Collector setting aside the sale was without jurisdiction.

The other authority is the decision of their Lordships of the Judicial Committee of the Privy Council in the case of *Jagdishwar Dayal Singh v. Pathak Dwarka Singh*(2). Now, section 214 of the Chota Nagpur Tenancy Act provides that—

“No suit or application shall be entertained by any court to set aside or to modify the effect of—

(a) any sale made under this Chapter, save under sections 211, 212, etc. or on the ground of fraud or want of jurisdiction”.

And then clause (b) provides:

“An order under section 212, sub-section (2), or section 213, sub-section (2), setting aside a sale”.

Now I take it on the authority of the decision of a Divisional Bench of this Court, to which I have made reference, that having regard to the circumstances of the case the order was without jurisdiction, inasmuch as it was made as a result of the deposit two days after the 30 days had elapsed. Mr. Banerji contends that, as the order was made, in those circumstances and relying upon the decision in *Jagdishwar Dayal Singh's* case(2), it was not an order under section 212. Lord Thankerton, delivering the decision of their Lordships of the Judicial Committee in the last-named case, was dealing with a sale under the Chota Nagpur Tenancy Act and a sale which they held ultimately (confirming the decision of this Court) was a sale which was ultra vires of the Revenue Court. Lord Thankerton then proceeds to observe “and it follows that the sale was not made under this Chapter” and that therefore the prohibition as regards action under

(1) (1934) I. L. R. 13 Pat. 641.

(2) (1938) I. L. R. 12 Pat. 626; L. R. 60 I. A. 176.

section 214 did not apply. But their Lordships of the Judicial Committee were dealing with the first clause of section 214, i.e., clause (a). Now the difference between clause (a) and clause (b) of section 214 is this that, whereas there is a general prohibition as regards both clauses [clause (a) and clause (b)], the legislature has provided exceptions to clause (a) which it does not provide as regards clause (b): in other words, an action might be brought in spite of the prohibition with regard to sales under clause (a) on the ground that they were fraudulent or without jurisdiction, but there is no such exception as to causes of action based on fraud or want of jurisdiction with regard to orders under section 212. That in my judgment it raises a very considerable difficulty and one which is likely to arise in cases of this kind, and for the reasons which I have stated I am referring this case to a Divisional Bench of this Court. The view I myself hold with regard to the matter is that whereas there is no exception with regard to orders made under clause (b) enabling the plaintiff to bring an action on the ground of fraud or want of jurisdiction, the prohibition under section 214 and an order purporting to be under section 212 is absolute.

The matter will be referred to a Divisional Bench.

On this reference—

K. K. Banarji, for the appellants.

No one for the respondent.

MADAN, J.—This matter comes before this Bench by reference from a single Judge. The facts briefly are that on the 17th December, 1931, respondents nos. 4 and 5 brought the holding of respondents nos. 1—3 to sale under section 208 of the Chota Nagpur Tenancy Act, and the holding was purchased by the appellant. The 16th of January 1932 was the last day for making a deposit under section 212 of the Chota Nagpur Tenancy Act; but respondent no. 2 came forward on the 18th January 1932 with the amount due. The Rent Suit Deputy Collector, in spite of the expiry of the statutory period, accepted the amount and set aside the sale. The appellant accordingly filed the present suit for a declaration that the order of the Deputy Collector setting aside the sale was without jurisdiction and void for a declaration that his own purchase of the holding was valid and subsisting and for a permanent injunction restraining respondents nos. 1—3 from interfering with his possession. He also asked that if respondents 1—3

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were found to be in possession of the holding he should be restored to possession by evicting those respondents therefrom. Both the first court and the first appellate court held that the order of the Rent Suit Deputy Collector setting aside the sale was ultra vires, but they also held that the suit was barred under section 214(b) of the Tenancy Act. The appellant has therefore filed this second appeal.

For the appellant Mr. K. K. Banarji has argued that the order passed by the Deputy Collector was not an order under section 212. He relies on *Lachmi Ojha v. Maharaj Kumar Ram Ran Bijay Prasad Singh*⁽¹⁾ in which case a deposit was made within the statutory period but was afterwards found to be in deficit to the extent of twelve annas. It was held that in these circumstances the order setting aside the sale was invalid, and Macpherson, J., observed :

“ If the period of 30 days from the date of sale allowed by section 174 of the Bengal Tenancy Act and by Order XXI, r. 89 to the judgment-debtor for making the deposit in court can be extended at all, it is only when the judgment-debtor has established that he has made a mistake and that that mistake is directly due to an act of the court itself ”.

Section 174 of the Bengal Tenancy Act is analogous to section 212 of the Chota Nagpur Tenancy Act, and on the strength of this authority I must hold that the order setting aside the sale in this case was ultra vires. It is true that section 214(b) purports to bar a suit to set aside an order passed under section 212, but the application of section 212 is confined to the statutory period of 30 days, and a court passing an invalid order after that period cannot be said to be acting under that section. In the reference to this Court it is pointed out that whereas section 214(a) of the Chota Nagpur Tenancy Act makes an exception in the case of a suit brought on the ground of fraud or want of jurisdiction, no such exception is made in

(1) (1934) I. L. R. 13 Pat. 641.

the case of section 214(b). Whatever may be the reason for this omission—which is probably due to a faulty amendment of section 214 (b) the Amendment Act of the year 1920—I do not see how it can affect the argument set forth above, or how section 214(b) constitutes a bar to the inherent right of the civil court to set aside a decree or order obtained by fraud or passed without jurisdiction. This right is also expressly recognized in section 258 of the Chota Nagpur Tenancy Act in relation to orders and decrees passed under that Act, including order passed under Chapter XVI which includes section 212. In *Kumar Rameshwar Narain Singh v. Mahabir Prasad*⁽¹⁾, a case under section 231 of the Chota Nagpur Tenancy Act, Dawson Miller, C.J., observed :

“ The right to sue for the possession of land and the right to ask for a declaration that sale has been fraudulently confirmed are not rights arising under the Chota Nagpur Tenancy Act. It is true that the Act in some cases takes away the right to sue for setting aside a sale, but it nowhere grants that right although to some extent it limits it.”

In the present case I must hold that the order passed by the Deputy Collector was without jurisdiction and was not an order passed under section 212 of the Act, and that the appellant had his remedy in the civil court.

I would, therefore, allow this appeal and set aside the order of both the courts below and decree the appellant's suit in full. The appellant is allowed his costs in the courts below, but there will be no costs in this Court in which the respondents have not appeared.

ACARWALA, J.—I agree.

Appeal allowed.

(1) (1926) I. L. R. 5 Pat. 759.

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MADAN, J.