

decided the case reported in 11 Patna considered and disagreed with the judgment of the Allahabad High Court. We are bound by the decision of our own Court especially having regard to the fact that, speaking for myself I think, the judgment of the learned Judges who decided the Patna case was correct. On this ground it is clear that the suit is not barred by limitation.

The judgment of the lower appellate Court must be set aside and the judgment and the decree of the trial Court restored with costs throughout against defendant no. 1.

SAUNDERS, J.—I agree.

*Appeal allowed.*

1935.

NARAYAN  
PRASAD  
PANDA  
v.  
SREEMATI  
ADARMONI  
DASI.

COURTNEY,  
TERRELL,  
C.J.

## REVISIONAL CIVIL.

*Before Courtney Terrell, C.J. and Saunders, J.*

KESHAB PRUSTI

v.

ANANTA MAHANTY.\*

1935.

December,  
11.

*Orissa Tenancy Act, 1913 (Act II of 1913), section 204, sub-sections (1) and (A) and section 227—order setting aside sale under section 227, whether appealable—Civil Procedure Code, 1908 (Act V of 1908), Order XLIII, rule (1), clause (g).*

Section 204 does not deal with the class of orders that shall or shall not be appealable, but the tribunal to which appeals shall lie if under the law an appeal lies at all.

An order under section 227 of the Orissa Tenancy Act, setting aside a sale, is appealable under Order XLIII, rule 1(g) of the Code of Civil Procedure, 1908.

### Applications in revision by judgment-debtors.

\* Circuit Court, Cuttack. Civil Revisions nos. 85 and 105 of 1934, from an order of B. Mukherjee, Esq., I.C.S., Collector of Cuttack, dated the 21st August, 1934, revising an order of Babu M. M. Patnaik, Sub-Deputy Collector, Cuttack, dated the 28th March, 1934.

1935.

KESHUB  
PRUSTI  
v.  
ANANTA  
MAHANTY.

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

*G. Jagati*, for the petitioners.

*P. Mahanty*, for the opposite party.

COURTNEY TERRELL, C.J.—These are two applications in civil revision of the same kind in two rent suits against a number of tenants who were joint defendants, in which decrees were passed. The holdings were sold and an application was made by some of the defendants in each case to set aside the sales on the allegation that the bidding at the sale had been done by persons who were in league with some of their co-defendants and that the sales were accordingly objectionable under section 227, sub-section (2), of the Orissa Tenancy Act, which forbids a judgment-debtor to purchase a holding sold in execution of a decree.

The matter came before the proper tribunal, that is to say, the Sub-Deputy Collector, who considered the case on its merits and ordered that the sales should be set aside. The purchasers then appealed to the Collector. An objection was taken to the admissibility of the appeal on the ground that no appeal lay and for that purpose reference was made to section 204 of the Orissa Tenancy Act. The Collector decided that he had jurisdiction to entertain the appeal and he set aside the order of the Sub-Deputy Collector. These applications are now made in civil revision of the Collector's order on the ground that he was wrong in his view that he had jurisdiction to hear the appeal. The argument addressed to us is as follows:—

Reference is made to section 204, sub-section (1), which states that there shall be an appeal from an order or decree passed under this Act “ (otherwise than an order passed after decree and relating to the execution thereof) ” to the Commissioner or to

the Collector. Sub-section (4) which also deals with the forum to which appeals shall lie is as follows:

“ An appeal shall lie against any order specified in clause (b) or (c) of sub-section (1) (except an order which is not appealable under the Code of Civil Procedure, 1908) to the Court to which an appeal from the judgment in the suit would lie.”

This was an order under the abovementioned clause (c) of sub-section (1), and it is contended that whereas no appeal from an order holding that a sale is invalid on the ground that a judgment-debtor has purchased at the sale is permitted by the Code of Civil Procedure, there can be no appeal under this Act. That in substance is the argument which has been addressed to us. The answer, in my opinion, is simple. In the first place the whole of section 204 and in particular sub-sections (1) and (2) deals, not with the class of orders which shall or shall not be appealable, but with the tribunal to which appeals shall lie if under the law an appeal lies at all, and further because of the true meaning of the words “ except an order which is not appealable under the Code of Civil Procedure, 1908 ”.

Now by section 104 of the Civil Procedure Code and by Order XLIII only those orders which are made appealable under those parts of the legislation, are appealable. It is quite clear that as the Code of Civil Procedure was passed long before the Orissa Tenancy Act, the Civil Procedure Code could not possibly have specified the orders under section 227 of the Orissa Tenancy Act.

It is conceded that Order XLIII, rule 1, clause (j), sets forth every kind of order under the Civil Procedure Code under which a sale may be set aside or under which an application to set it aside may be refused. It is clear, therefore, that under the Civil Procedure Code there is a provision for an appeal in every case in which a sale is set aside. The Order does not include the reasons for setting aside sales; the setting aside of sales may be justified for a variety of reasons according to the circumstances in which

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the application is made and the reasons form no part of the Order. We have it, therefore, that under the Civil Procedure Code every order setting aside a sale is appealable. That being so, orders setting aside sales are appealable under the Code of Civil Procedure, 1908, and therefore they are appealable under the Orissa Tenancy Act and do not come within the words in the brackets. The words within the brackets in sub-section (4) may also be read as indicating that an appeal shall lie against any order unless an appeal is forbidden by the Civil Procedure Code and admittedly there is no clause in the Civil Procedure Code which forbids an appeal from an order made setting aside a sale under section 227 of the Orissa Tenancy Act. But in any case sub-section (4) of section 204 relates to the forum to which an appeal shall lie. In the event of the order being appealable it shall lie to the court to which an appeal from the judgment in the suit would lie.

Now the suit out of which this execution lay was a rent suit. It lay in the court of the Sub-Deputy Collector; the appeal lay to the Collector. Therefore the appeal from the order passed after the decree and relating to the execution thereof, as this was, will also lie to the Collector. The Collector's view of the matter was the correct one and his jurisdiction was properly exercised. It is admitted that no other point arises for discussion inasmuch as these are applications in civil revision and the question of jurisdiction is the only one which need engage us.

I would, therefore, dismiss these applications with costs.

SAUNDERS, J.—I agree.

*Applications dismissed.*