

1938. then to the final report of the current settlement operations—Mr. Dalziel's report. In paragraph 50, page 19, he refers to sub-proprietors as tenure-holders whose position approximates to that of proprietors of estates. In paragraph 447 at page 157 he says that "Section 15 recognizes their right to transfer their tenures without the consent of their landlords. But in other respects their position is practically that of an ordinary permanent tenure-holder, with fixity of rent." In the form of kabuliat for sub-proprietors annexed to the same report column 3 is for the "Date on which rent falls due". I have no doubt that what the sub-proprietor pays kist by kist to the proprietor is for our present purposes rent and he is for those purposes a tenant. It follows that the revenue officer had jurisdiction to settle and record the rent of the respondent.

The result is that the entry in the rent roll of annual rent Rs. 7-3-0 must be deemed to be correct. I would allow the appeal and give the plaintiff a decree for rent at this rate for the period in respect of which he has been held entitled to it with costs of the appeal and proportionate costs in the courts below.

HARRIES, C.J.—I agree.

Appeal allowed.

S. A. K.

REVISIONAL CIVIL.

Before Harries, C.J. and Rowland, J.

BHARI JENA

v.

GAURANGA CHARAN SAHU.*

Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 89—full decretal amount and compensation

*Circuit Court, Cuttack. Civil Revision no. 56 of 1937, from an order of A. N. Banarji, Esq., District Judge of Cuttack, dated the 5th October, 1936, affirming an order of Babu Dwarikanath Das, Munsif of Jajpur, dated the 18th April, 1936.

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December, 7.

MAHANT
SIDHAKAMAL
RAMANUJ
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BETAKRISHNA
MAHAPATRA.

ROWLAND, J.

deposited in court within thirty days—application for setting aside sale not filed—sale, whether can be set aside.

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An execution sale cannot be set aside under Order XXI, rule 89, Code of Civil Procedure, 1908, in the absence of an application for setting aside the sale, even though the full decretal amount together with compensation is deposited in court within thirty days.

Raoji v. Bansilal Narayan Marwari(1), *Mathura Prasad v. Ram Lal*(2), *R. Venkatasubba Rao v. K. Narayana Rao*(3) and *Ramshivendra Narayan Ojha v. Awadh Bihary Saran*(4), followed.

Appeal by the judgment-debtor.

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

H. Sen, for the petitioner.

S. N. Sen Gupta, for the opposite party.

HARRIES, C.J.—This is an application for revision of an appellate order passed by the learned District Judge of Cuttack upholding an order of the learned Munsif rejecting an application for setting aside a sale.

It appears that the present petitioner's property was sold in execution of a mortgage decree on the 15th of January, 1936. Within thirty days of the date of the sale the petitioner deposited in court the entire decretal amount and compensation; but this deposit was not accompanied by any petition requesting the court to set aside the sale. The chalan showing the deposit was put up before the learned Munsif on the 17th of February, 1936, and it was noted in the ordersheet that no petition for setting aside the sale had been filed. On the 20th of February, 1936, the learned Munsif passed an order that the sale could not be set aside as no petition for setting it aside had been presented to the court. The sale was, therefore, confirmed.

(1) (1919) I. L. R. 43 Bom. 735.

(2) (1910) 9 Ind. Cas. 33.

(3) (1922) A. I. R. (Mad.) 83.

(4) (1923) A. I. R. (Pat.) 159.

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On the 29th of February, 1936, the petitioner made an application purporting to be under section 151 and Order XXI, Rule 89, of the Code of Civil Procedure, for reviewing the order of the learned Munsif. This application was heard in due course, and it was then suggested that the failure to make an application to set aside the sale was due to a pleader's clerk, but eventually this point was not pressed. The learned Munsif refused to interfere and his order was upheld by the learned District Judge.

There can be no doubt that no written or verbal application was made to the court when the decretal amount and compensation was deposited, and upon the findings of the court below it is impossible for this Court to hold that such failure was due to any pleader's clerk or to any error or failure on the part of any officer of the Court. The failure to present an application for setting aside the sale was apparently due to the petitioner's ignorance of the provisions of law applicable to the case. It was contended in the Court below and has been contended in this Court that the depositing of the decretal amount together with compensation amounted to an application for setting aside the sale. In any event it is said that such an application must be implied from the very fact that the decretal amount and compensation was deposited.

This contention has been put forward on many occasions previously. In the case of *Raoji Walad Baburao v. Bansilal Narayan Marwari*⁽¹⁾ a Bench of the Bombay High Court held that a sale could not be set aside in the absence of an application even though the full decretal amount had been deposited. The Court further held that it had no power under section 115 of the Code of Civil Procedure to interfere in such a case. In *Mathura Prashad v. Ram Lal*⁽²⁾ a single Judge of the Allahabad High Court came to the same conclusion. The same view was expressed by a single Judge of the Madras High Court in

(1) (1919) I. L. R. 48 Bom. 735.

(2) (1910) 9 Ind. Cas. 33.

R. Venkatasubha Rao v. K. Narayana Rao⁽¹⁾. There is no Patna case precisely in point; but the case of *Ramshivendra Narayan Ojha v. Awadh Bihary Saran* ⁽²⁾ supports the view which I have expressed. There can be no question that there is a body of authority for the view held by the learned District Judge. The case is undoubtedly a very hard one, but that does not permit the Court to interfere where it has no power so to do.

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In my view no ground has been made out for interfering with the decision of the lower appellate Court and accordingly I would dismiss this application and make no order as to costs.

ROWLAND, J.—I agree.

Rule discharged.

S. A. K.

REVISIONAL CIVIL.

Before Harries, C. J. and Rowland, J.

MANMATHA NATH MULLICK

vs.

JITENDRA NATH MUKHARJI.*

1938.

December, 7.

Legal Practitioners (Fees) Act, 1926 (Act XXI of 1926), section 4—several pleaders engaged in a case—absence of specific agreement as to amount of fees—each pleader, whether entitled to full fee assessed at the hearing.

Where several pleaders have been engaged in a case and no agreement is specifically entered into as to the amount of their fees, each pleader is entitled to his fees up to the full fee assessed at the hearing.

*Circuit Court, Cuttack. Civil Revision nos. 33 of 1937, 10 of 1938, and 106 of 1938, from the orders of Babu R. C. Mitra, Small Cause Court Judge of Puri, dated the 8th May, 18th September and 23rd December, 1937.

(1) (1922) A. I. R. (Mad.) 83.

(2) (1923) A. I. R. (Pat.) 159.