

CIVIL RULE.

Before Chitty and Tewson JJ.

1913

Jan. 13.

KARTIK CHANDRA OJHA

v.

GORA CHAND MAHTO.*

High Court, Jurisdiction of—Chota Nagpur Tenancy Act (Beng. VI of 1908) s. 27—Application for enhancement of rent—Jurisdiction of the High Court to set aside an order of Deputy Commissioner passed without jurisdiction, on appeal from an order of Deputy Collector—Judicial proceeding.

Proceedings on applications for enhancement of rent under section 27 of the Chota Nagpur Tenancy Act are judicial proceedings, and Deputy Commissioners in the performance of their judicial duties under the Act are Courts subject to the appellate jurisdiction of the High Court.

The High Court has jurisdiction to interfere in cases where the Courts of Collectors have either exceeded the jurisdiction or failed or refused to exercise the jurisdiction vested in them by the Chota Nagpur Tenancy Act.

Chaiton Patgosi Mahapatra v. Kunja Behari Patnaik (1) referred to.

RULE granted to the petitioners, Kartik Chandra Ojha and others.

The petitioners made an application for enhancement of rent of the holdings of the tenants (opposite party) under section 27 of the Chota Nagpur Tenancy Act, in the Court of the Deputy Collector, Purulia. The opposite party took various objections to the application of the petitioners, but the learned Deputy Collector overruled the objections, and made an order enhancing the rent of the tenants. Against this order

* Civil Rule No. 4910 of 1912, against the order of G. Milne, Deputy Commissioner of Manbhum, dated June 7, 1912.

the tenants preferred an appeal to the Deputy Commissioner who dismissed the petitioners' application, on the ground that the questions at issue should be decided only "after a full and fair trial" or "by the Settlement Department in the villages." Against this order the petitioners moved the High Court and obtained this Rule.

1913
 KARTIK
 CHANDRA
 OJHA
 v.
 GORA CHAND
 MAHTO.

Babu Karunamoy Ghose, for the opposite party, took a preliminary objection that the High Court had no jurisdiction to interfere in proceedings which arose out of applications for enhancement of rent under section 27 of the Chota Nagpur Tenancy Act. The Chota Nagpur Tenancy Act (Beng. VI of 1908) being a complete Code in itself, the Courts are to be guided by the procedure laid down therein: see *Radha Madhub Santra v. Lukhi Narain Roy Chowdhry* (1) and *Nogendro Nath Mullick v. Mithura Mohun Parhi* (2). The High Court cannot revise orders passed by Courts of Collectors, under section 115 of the new Code of Civil Procedure: see *Raghubar Sahi v. Protap Uday Nath Sahi Deo* (3). In the Chota Nagpur Tenancy Act, suits and applications are not interchangeable terms: see *Khetra Nath Ghatak v. Piru Bamri* (4). Therefore, the High Court has no jurisdiction to interfere in proceedings based on applications, under section 15 of the Charter Act, by which it is vested with power of superintendence over Courts subject to its appellate jurisdiction, and only in cases of suits and appeals. No appeal lies to the High Court in cases of applications under the Act. The Board of Revenue and the Commissioner have the power of superintendence over the Courts of Collectors: see sections 216, 264 and 274 of the Act. The cases under

(1) (1893) I. L. R. 21 Calc. 428.

(3) (1911) I. L. R. 39 Calc. 241.

(2) (1891) I. L. R. 18 Calc. 368.

(4) (1911) 13 C. L. J. 250.

1913

KARTIK
CHANDRA
OJHA
v.
GORA CHAND
MAHTO.

Act X of 1857 in which the High Court interfered under section 15 of the Charter Act, are distinguishable, as they related to suits and not to applications. In any case the petitioners ought to have gone to the Commissioner first, before coming to the High Court. The case falls under section 76 cl. (10) of the Act, and the order of Deputy Commissioner is final.

Babu Bepin Behary Ghose, for the petitioners. The orders passed by the Deputy Commissioner under the Act are those of a Civil Court and second appeals are allowed in certain cases to the High Court, so he is subject to the appellate jurisdiction of the High Court, which has therefore power to interfere with the orders of the Deputy Commissioner under section 15 of the Charter Act: see *Nilmoni Singh Deo v. Tara Nath Mukerjee* (1). It is immaterial that no appeal is allowed by the Act from certain orders, for in cases where an appeal is allowed there would be no occasion for an application for revision. It is true that powers have been conferred by the Act on the Commissioner and the Board of Revenue by section 217 to revise certain orders, but that provision cannot deprive the High Court of its jurisdiction, nor could it be so intended. There were similar provisions under sections 151 and 152 of Act X of 1859, but the High Court never refused jurisdiction to entertain applications for revision in such cases: see *Chaitan Patgosi Mahapatra v. Kunja Behari Patnaik* (2). There can be no doubt that the order complained against was one in which the learned Deputy Commissioner failed to exercise the jurisdiction vested in him by law.

Cur. adv. vult.

CHITTY AND TEUNON JJ. In this case the landlord petitioners made an application under section 27 of

(1) (1882) I. L. R. 9 Calc. 295.

(2) (1911) I. L. R. 38 Calc. 832.

the Chota Nagpur Tenancy Act (Bengal Act VI of 1908) for the enhancement of the rent paid by the tenants opposite-parties in respect of their holding.

The application was heard by a Deputy Collector empowered to discharge the functions of a Deputy Commissioner under section 27 and the following sections of the Act. After a prolonged enquiry the Deputy Collector on the 12th February, 1912, made an order enhancing the rent of the tenants from Rs. 2-8 to Rs. 32-10-5 per annum. Against this order the tenants preferred an appeal under the provisions of section 215 (1) (iv) to the Deputy Commissioner who, after commenting on the proceedings of the Deputy Collector in terms which should not find a place in the judgment of any Court, dismissed the landlords' application on the ground that in his opinion the questions at issue should be decided only "after a full and fair trial" or "by the Settlement Department in the village."

It is not suggested that in the area with which we are here concerned any order for the preparation of a record-of-rights had been issued, and obviously if in the opinion of the Deputy Commissioner the case had not been fully and fairly tried his proper course was to make or direct such further inquiry as might be necessary.

It therefore cannot be and has not been disputed before us that in omitting to deal with the appeal before him on the merits the Deputy Commissioner has failed to exercise a jurisdiction vested in him by law. But on behalf of the tenants opposite-parties it has been contended that the Courts of Deputy Commissioner when dealing with applications for the enhancement of rent under the provisions of sections 27 to 30 of the Chota Nagpur Tenancy Act are not Courts subject to the appellate jurisdiction of

1913

KARTIK
CHANDRA
OJHAv
GORA CHAND
MAHTO.

1913
 ———
 KARTIK
 CHANDRA
 OJHA
 v.
 GORA CHAND
 MAHTO.

this Court within the meaning of section 15 of the Indian High Courts Act 1861, that superintendence over Deputy Commissioners in the performance of their duties under the Act is by its express provisions vested in the Commissioner and the Board of Revenue and that, therefore, this Court has no jurisdiction, or at least should not interfere.

These contentions are based on the provisions of section 215(2) (which in terms relates to suits only), section 217 and section 270 of the Act.

From the very nature of the proceedings themselves, and also from the provisions of the Act as contained, for instance, in Chapter XVI it is clear that proceedings on applications for enhancement of rent are judicial proceedings, and in view of the express provisions of section 224 (2) which allows in certain cases a second appeal to this Court, it cannot in our opinion be contended that Deputy Commissioners in the performance of their judicial duties under the Chota Nagpur Tenancy Act are not Courts subject to the appellate jurisdiction of this Court.

No doubt, by the provisions of the sections we have already cited, powers of revision, direction and control are vested in the Commissioner and the Board of Revenue. But these sections merely reproduce in practically identical terms the provisions of sections 151 and 152 of Act X of 1859, and notwithstanding the existence of these provisions in that Act, this Court in a long series of decisions [we need here refer only to the case of *Chaitan Patgosi Muhapatra v. Kunja Behari Patnait*(1)], has held that it has jurisdiction and has interfered in cases where the Courts of Collectors have either exceeded the jurisdiction or failed or refused to exercise the jurisdiction vested in them by the said Act.

(1) (1911) I. L. R. 38 Calc 832.

We are therefore of opinion that in the present case we have jurisdiction and should interfere.

We accordingly make this Rule absolute, set aside the order of the Deputy Commissioner dated the 7th June, 1912, and direct him to proceed with and determine the appeal before him on the merits.

We make no order as to costs.

S. C. G.

Rule absolute.

1913

KARTIK
CHANDRA
OJHA
v.
GORA CHAND
MAHTO.

ORIGINAL CIVIL.

Before Fletcher J.

GREY

v.

LAMOND WALKER.*

1913

Jan. 29

Sale of goods—insolvency of purchaser before delivery—Vendor's right to refuse delivery—Official Assignee, duties and rights of—Election within reasonable time—Tender of cash before delivery—Presidency Towns Insolvency Act (III of 1909) ss. 52, 62, 64—Joint Hindu family, insolvency of member of—Infant partner—Contract Act (IX of 1872) s. 247.

On the insolvency of the *karta* of a *mitakshara* Hindu family, a suit is not maintainable by the Official Assignee for damages for breach of a contract entered into by the firm, which was the joint business of the family.

Under section 52 of the Presidency Towns Insolvency Act, the rights that passed to the Official Assignee were the rights the insolvent had under the contract *as an insolvent*: hence, it was the duty of the Official Assignee to declare his election to take up the contract within a reasonable time, and to tender cash before calling for delivery.

Ex parte Chalmers (1) and *Morgan v. Bain* (2) followed.

* Original Civil Suit No. 689 of 1912.

(1) (1873) L. R. 8 Ch. App. 289. (2) (1874) L. R. 10 C. P. 15.