

Bali and ors. Vs. State

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SooperKanoon Citation : sooperkanoon.com/529607

Court : Orissa

Decided On : Jul-11-1966

Reported in : 33(1967)CLT152; 1968CriLJ568

Judge : G.K. Misra, J.

Appellant : Bali and ors.

Respondent : State

Judgement :

ORDER

G.K. Misra, J.

1. In title suit No. 8 of 1960 in the Court of the Munsif, Kendrapara, a receiver had been appointed for harvesting of paddy. On 10.4.64, the receiver filed an application before the learned additional Munsif that the petitioners forcibly removed the paddy which was kept in thrashing floor. The learned Munsif went into evidence, accepted the receiver's version and held that the paddy, was removed from the custody of the Court. He directed the filing of a complaint under Section 379, I.P.C. before the S.D.M., Kendrapara against the petitioners. The petitioners filed an appeal before the District Judge, Cuttack. The appeal was transferred to the Court of the Addl. Subordinate Judge, Cuttack. Sri M.J. Rao, Addl. Sub-Judge, heard and dismissed the appeal. This revision has been filed on the appellate order.

2. The only contention raised by Mr. Misra is that under Section 195(8), Criminal P.C. the Court of the Addl. Munsif, Kendrapara, is not subordinate to that of the Addl. Sub. Judge, Cuttack, as no appeal ordinarily lies from the decrees passed by it to the Addl. Sub-Judge. The contention required careful examination.

3. Under Section 476B, Criminal P.C. any person against whom any Civil Court makes a complaint under Section 476, Criminal P.C. may appeal to the Court to which such former Court is subordinate within the meaning of Section 195, Sub-section (3). Under that section, a Court shall be deemed to be subordinate to the Court to which appeal ordinarily lie from the appealable decrees of such former Court. It is well known that from the decree of a Munsif, appeal lies to the Court of the District Judge of the district. The District Judge transfers such cases either to an Addl District Judge or to a Subordinate Judge.

There was some controversy as to whether an Addl. District Judge or a Sub-Judge is competent to hear an appeal from the decree of a Munsif making a complaint under Section 476, Criminal P.C. In : 1956 CriLJ781 , Kuladip Singh v. State of Punjab, their Lordships held that the words 'Court to which appeals ordinarily lie' in Sub-section (8) do not mean the Court by which appeals are ordinarily heard. In that view of the matter, the District Judge alone could have heard this appeal. The appeal could not have been transferred either to the Addl. District Judge or to the Subordinate Judge. The Addl. Subordinate Judge had no jurisdiction to hear this appeal. The same view has been taken by this Court in (1965) 82 Cut L T 290, Banamali Bhadia v. Jadunath Pradhan.

4. In the result, the appellate judgment is set aside and the case is remanded to the District Judge, Cuttack, who would himself hear the appeal and go into other questions. The revision is allowed.