

Gajraj Das and anr. Vs. Kripa Sindhu Das

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Court : Kolkata

Decided On : Mar-01-1912

Reported in : 14Ind.Cas.160

Judge : Coxe and ;Imam, JJ.

Appellant : Gajraj Das and anr.

Respondent : Kripa Sindhu Das

Judgement :

1. This was an appeal from an order of the Commissioner of Orissa passed in appeal from an order of a Subordinate Officer exercising the powers of a Deputy Commissioner made under Section 136-G. of the Central Provinces Land Revenue Act, 1881. A preliminary objection is taken that no appeal lies.

2. Section 136 H of the Central Provinces Land Revenue Act, as it originally stood, laid down that these decrees should 'be open to appeal as if passed by the Court of the Deputy Commissioner acting as a Court of Civil Judicature of first instance under the Central Provinces Civil Courts Act, 1885.'

3. At that time (1889), the Civil Courts Act, 1885, was in force and under it there was a Court of a Deputy Commissioner from which appeals lay to the Court of the Commissioner (Sections 4 and 7.)

4. This Act was repealed by Act II of 1904. Under this, there was no Court of a Deputy Commissioner but a District Court. If Sections 6 and 10 of the Act of 1885 be compared with Section 13 of the Act of 1901, it will be evident that the Court of the Deputy Commissioner corresponds as nearly as may be with the District Court. Act II of 1904 repealed Section 4 of the Act of 1885 and re-enacted it with modification in Section 10 of the Act of 1904. The effect of this, under Section 8 of the General Clauses Act, 1897, would be, that the reference to the Act of 1885 in other enactments, such as the Central Provinces Land Revenue Act, would be construed as referring to the Act of 1904. In other words, Section 136 H would be read as 'shall be open to appeal as if passed by the District Court acting as a Court of Civil Judicature of first instance under Central Provinces Civil Courts Act, 1904.' In that case, the appeal would lie either to the Judicial Commissioner or to the Divisional Court under Section 15(c), in this case to the Divisional Court. Thereafter, Bengal Act IV of 1906 was passed, and Section 4 laid down that references to the Central Provinces Courts Act should be construed as references to the Bengal Civil Courts Act, 1887, so that the sentence quoted above would thereafter have run 'shall be open to appeal as if passed by the District Court acting as a Court of Civil Jurisdiction of first instance under the Bengal Civil Courts Act.' If Section 13 of the Central Provinces Act is compared with Section 15 of the Bengal Act, it is clear that the District Court of the former corresponds most closely to the Court of the District Judge in the latter. So that, ultimately, the sentence quoted above must, in our opinion, be construed as if it ran 'shall be open to appeal as if passed by the Court of the District Judge acting as a Court of Civil Judicature of first instance under the Bengal Civil Courts Act.' And the appeal under Section 20 would not lie to the Commissioner.

5. If this view is correct and it appears to be supported to a certain extent by the decision in *Raghunath Singh v. Abdhut Singh* 9 Ind. Cas. 202 : 38 C. 391 : 13 C.L.J. 412 it must be held that no appeal lay to the Commissioner and that, therefore, no appeal lies from the Commissioner to this Court.

6. The appeal is accordingly dismissed but in the circumstances we do not allow costs.

