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## **Sushil Kr. Pradhan Vs Sandip Kr. Bej and Others**

**S.A. No. 94 of 1997**

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**Court:** Calcutta High Court

**Date of Decision:** Feb. 26, 2009

**Acts Referred:**

Specific Relief Act, 1963 " Section 34#West Bengal Estates Acquisition Act, 1953 " Section 4, 5B, 6(1)(c)

**Hon'ble Judges:** Prasenjit Mandal, J

**Bench:** Single Bench

**Advocate:** Deboprasad Adhikary and Jiban Hari Malliok, for the Appellant; Santimay Panda, Monoranjan Mahata, Lalit Mohan Mahata and Santimay Bhattacharya, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Prasenjit Mandal, J.

The Judgment of the Court was delivered by:

1. This appeal is directed against the judgment and decree dated 13.03.1995 and 24.03.1995 respectively passed by the learned Assistant District

Judge, Tamluk in Title Appeal No. 41 of 1992 whereby he reversed the judgment and decree dated 31.01.1992 and 06.02.1992 respectively

passed by the learned Munsif, Second Court, Tamluk in Title Suit No. 66 of 1989.

2. The short fact leading to the filing of this second appeal is that the plaintiff/appellant filed the Title Suit No. 66 of 1989 against the

defendants/respondents for declaration of his right, title and interest over the suit lands as described in the schedule of the plaint and permanent

injunction against the defendants/respondents in respect of the said lands. One Jogendranath Bej and his four brothers were the intermediaries and

they possessed the suit lands along with other lands. Jogendranath Bej got the suit lands by way of amicable partition amongst his brothers and

upon his death, the suit lands along with other lands devolved upon his wife, Bhagyabati Bej. Bhagyabati Bej was not in a position to pay up the

agricultural income tax in respect of the suit lands and other lands and accordingly certificate case No. 64/D/8 and 65/D/8 of 1957/1958 were

started against Bhagyabati Bej and the plaintiff purchased the suit lands along with other lands in the certificate case and he obtained possession of

the suit lands on 05.01.1962. Subsequently Government declared that the suit lands had been vested in the State. As a result, the plaintiff filed the

Title Suit No. 31 of 1971 challenging the order of vesting. The suit was decreed. The State being aggrieved filed the Title Appeal No. 479 of 1972

and that appeal was dismissed. When the plaintiff took steps to construct a house over the suit lands the defendants/respondents claimed to have

purchased the suit lands from the heirs of one Panchuram Das, namely Bijoy, Chitta @ Khadu and Sudhir and they raised resistance against

construction of any house by the plaintiff. On enquiry the plaintiff came to know that the name of Panchuram Das was wrongly recorded in the C.

S. record of rights having ""Chakran"" right over the suit lands. The said Panchuram Das had no tenancy right over the suit lands. Thereafter the

plaintiff filed the Title Suit No. 66 of 1989.

3. The defendant nos.1, 2 and 4 of that suit contested the said title suit contending, inter alia, that the suit lands especially the plot No. 904

measuring 35 decimals belonged to Panchuram Das and after his death his three sons namely Bijoy, Khadu and Sudhir inherited the same and their

names were duly recorded in the R. S. record of rights in respect of 33 decimals of land in plot No. 904 and two decimals of land in suit plot No.

904/992 under Khatian No. 164 and subsequently Sudhir and Khadu sold their shares in those plots to their brother Bijoy in 1960. Thus, Bijoy

became the exclusive owner in respect of the entire 35 decimals of land in the suit lands. Subsequently, Bijoy sold half of the suit lands to one

Kiran Sashi Bej on 03.04.1962 and the remaining half to the defendant No. 1, Sandip Kumar Bej, on 06.04.1962 and he delivered possession

thereof in their favour. Then Kiran Sashi Bej raised a pucca house on her purchased portion of the suit lands and began to live thereon. She and

the defendant No. 1 began to possess the remaining portion of the suit lands by cultivation. After her death, her husband being the owner of the suit

lands, gifted the said half share to Prabir Kumar Bej, defendant No. 2, on 14.02.1970. Thus, the defendants became the absolute owners of the

suit lands and they possessed the same all along. Thereafter they allowed one Moymun Bibi to possess two decimals of land as a licensee which

was recorded in plot No. 904/992 in her name. Thus neither Jogendranath Bej nor his wife Bhagyabati Bej had any right, title and interest over the

suit lands and the said auction sale subsequent title suit and the title appeal all were conclusive and not binding upon the defendants. So they prayed

for dismissal of the suit.

4. Upon considering the evidence adduced by the parties the learned Munsif decreed the suit. But the learned lower appellate Court reversed the

said judgment and decree and he dismissed the suit on contest. Being aggrieved by the said judgment and decree of the learned lower appellate

Court the plaintiff/appellant preferred this appeal.

5. In this appeal the following substantial question of law has been framed for decision:-

Whether the learned Court of Appeal below erred in reversing the judgment passed by the Learned Trial Judge without taking into consideration

the implication of the entries of land in the record of rights as ""Chakran"" land and as to whether the entries therein is to be made vis-à-vis u/s

6(1)(c) of the West Bengal Estate Acquisition Act.

6. Mr. Adhikari, learned Advocate for the appellant contended that learned Lower Appellate Court committed wrong in not considering the fact

that Bhagyabati Bej did not pay the agricultural income tax and as such her lands including the suit lands had been sold in the certificate cases and

the fact that the plaintiff/appellant purchased the suit lands in the certificate cases and got possession of the same on 05-01-1962. He also

contended that the plaintiff/appellant has been possessing the suit lands all along since purchase by paying rents to the Government and that the

Government granted rent receipts accordingly. He contended that the learned Lower Appellate Court failed to appreciate the fact that on 27-09-

1972 the learned Munsif decreed the Title Suit No. 31/71 filed by the plaintiff holding inter alia that the vesting of the suit lands as the excess land

of Bhagyabati Bej after the auction sale was legal and that the sale of the suit lands in the certificate cases and the writ of delivery of possession

were valid. As a result, the Court declared plaintiff's right, title, interest and possession over the suit lands. Consequently, the R.S. record of rights

was declared wrong. The appeal preferred by the State of West Bengal was dismissed thereby confirming the judgment and decree of the Trial

Court. The defendants were the parties in Title Suit No. 31/71 but they did not contest the suit. So, they are not entitled to re-open the chapter

again. He also contended that the learned Lower Appellate Court has failed to consider that Panchuram Das had no right to transfer because he

possessed ""Chakran"" right in respect of the suit lands. So, his sons did not inherit the suit lands at all. Therefore, the R.S. record of rights and,

consequently, the L.R. record of rights are wrong. He contended that the learned Lower Appellate Court did not at all consider the implication of

the provisions of Section 6(1)(C) of the West Bengal Estate Acquisition Act, 1953. He contended that the decision of the learned Lower

Appellate Court could not be supported. His findings that the suit was hit by Section 34 of the Specific Relief Act and that other co-sharers were

necessary parties, were wrong. Therefore, the judgment and decree of the learned Lower Appellate Court could not be supported.

7. Learned Advocate for the respondents, on the other hand, submitted that the certificate cases and the delivery of writ of possession were

collusive. The judgment passed by the learned Munsif was not also binding upon the respondents because that the suit was also collusive. He also

contended that in view of Section 5B of the W.B.E.A. Act, 1953, the sale having taken place in 1957/58 was void. So, he supported the judgment

and decree passed by the learned Lower Appellate Court.

8. Upon considering the submissions of the learned Advocates of both the sides and perusing the materials on record I find that the

plaintiff/appellant filed the Title Suit No. 31/71 against defendant No. 1, father of defendant No. 2, Kunjabehari Bej from whom the defendant No.

2 got the suit lands by gift. The suit was decreed on 27-09-1972 holding inter alia that the vesting of the suit lands as excess land of Bhagyabati

Bej after the auction sale was illegal and that the sale certificate and the writ of delivery of possession were valid. The Court also declared

plaintiff's right, title, interest and possession over the suit lands. That suit was filed by the plaintiff against the State of West Bengal and other 28

defendants. The principal defendants were restrained permanently from interfering with plaintiff's possession. The State of West Bengal preferred

the Title Appeal No. 479 of 1972 which was dismissed on 07-10-1985 confirming the judgment and decree of the Trial Court. In that suit the

plaintiff asserted that Jogendranath Bej and his five brothers were the intermediaries in respect of the suit lands and other lands possessed by them.

As a result of amicable partition Jogendranath Bej got the suit lands along with other lands and after his death his wife Bhagyabati Bej got the suit

lands along with other lands. Because of her failure to pay agricultural income tax her lands including the suit lands were sold in the certificate cases

and the plaintiff purchased the suit lands along with other lands and he got possession of the suit lands on 05-01-1962 (vide Exht No. 2). The

plaintiff has also proved the dakhilas to show that he paid rents to the Government vide Exht No. 8. From the certificate copy of the judgment and

decree of that suit I find that the defendant No. 1 was a party to that suit. The father of the defendant No. 2 was also a party in the suit. The

defendant No. 2 claimed that he got the suit lands from Kunjabehari Bej who was also found a party in the Title Suit No. 31/71 but I find that they

did not contest the suit at all.

9. The suit lands comprised two plots at present bearing Nos.904 and 904/992 measuring 33 decimals and 2 decimals respectively. Previously

those were under one plot No. 904 to the extent of 35 decimals land. C.S. record of rights lays down that the land was recorded initially in the

name of Panchuram Das as his ""Chakran"" land (vide Exht.A). This C.S.R.O.R lays down that Jogendranath Bej and others were the intermediaries

in respect of the suit lands. The R.S. record lays down that the sons of Panchuram Das possessed the suit lands to the extent of 33 decimals and

one Moymun Bibi possessed 2 decimals of lands (vide Ext 9). Thus, from the admitted position we find that Jogendranath Bej and others were the

intermediaries in respect of the suit lands and other lands. It was the claim of the plaintiff that Jogendranath Bej got the suit lands exclusively by way

of amicable partition amongst his brothers. The defendant Nos.1 and 2 claimed that they got the suit lands by transfers from the heirs of Panchuram

Das. 10. The defendants respondents did not claim that Panchuram Das was a tenant under the then intermediaries namely Jogendranath Bej and

others. They did not file any rent receipt to show that they paid any rent to the then landlords to claim tenancy and for that reason Panchuram Das

became a direct tenant under the State w.e.f. 15-04-1955 as per Section 4 of the W.B.E.A. Act, 1953. Even one son of Panchuram was

examined but he could not clarify in this regard. So, it could well be decided that Panchuram Das possessed the land in the manner as indicated in

the C.S.R.O.R. that is by ""Chakran"" rights meaning thereby possession of the suit lands in lieu of service rendered by him to the intermediaries. So,

I am of the view that the status of the possessor namely Panchuram Das in respect of the suit lands was nothing but leave and licence under the

intermediaries. In such a situation the suit lands must be covered within the provisions of Section 6(1) (C) of the W.B.E.A. Act, 1953. For

convenience, I am quoting the relevant portion of the said Section:-

Non-agricultural land in his khas possession (including land held under him by any person, not being a tenant, by leave or licence), not exceeding

fifteen acres in area, and excluding any land retained under clause (a):

Provided that the total area of land retained by an intermediary under clauses (a) and (c) shall not exceed twenty acres as may be chosen by

him.....

11. Therefore, in view of the provisions of Section 6(1)(c) of the said Act the suit lands should have been considered as lands possessed by the

intermediaries. It was within the matter of the intermediaries that Jogendranath Bej got the suit lands by way of amicable partition amongst his

brothers. According to the plaint case, Bhagyabati Bej inherited the suit lands after death of her husband Jogendranath Bej. Such fact stood

proved by the subsequent event, that is, sale certificate cases indicating that Bhagyabati Bej inherited the suit lands previously. The certificate cases

and the fact of delivery of possession had been mentioned in the Title Suit No. 31/71. This matter was decided in that suit in favour of the plaintiff.

Thereafter the State of West Bengal filed an appeal against the said judgment and decree and the Appellate Court confirmed the judgment and

decree passed by the learned Munsif in the said suit vide Ext. Nos.5 & 6. The learned Lower Appellate Court failed to consider that aspect of the

matter of dispute in proper perspective. The substantial question of law is thus decided with such observations.

12. The learned Lower Appellate Court dismissed the judgment and decree of the learned Trial Court on the ground that the suit was hit by

Section 34 of the Specific Relief Act because the possession lands lies with the defendants respondents. This observation, I hold, cannot be

supported at all. The plaintiff/appellant claimed specific demarcated portion of the land as indicated in schedule "Kha" of the plaint and they

claimed that they got possession of the suit lands by way of writ of delivery of possession executed in 1962 vide Ext. No. 2. This issue had already

been settled holding that the plaintiff/appellant has been possessing the suit lands.

13. The learned Lower Appellate Court also observed that the suit was bad for defect of parties. This observation, I hold cannot be accepted

because the plaintiff described in the earlier suit how Bhagyabati Debi got the suit lands and in that suit the defendant No. 1, father of the defendant

No. 2 along with others were parties to the suit. They were very much aware of the claim that the plaintiff claimed over the suit lands by way

certificate of sale which also contained the suit lands; but they did not think it wise to contest the suit. Though, the suit lands were not included in

the earlier suit between the parties to the suit, the defendants of the suit very-well knew the basis of the claim of the plaintiff in that suit, that is, the

certificates sale. Panchuram Das had three sons who inherited the properties of Panchuram Das after his death and other two sons transferred their

right, title and interest in the suit lands in favour of Bijoy who sold the suit lands in favour the defendant No. 1 and predecessor in interest of the

defendant No. 2. Therefore, at present the heirs of Panchuram Das have no right, title, interest and possession over the suit lands. After

promulgation of the notification u/s 4 of the W.B.E.A. Act, 1953 all the persons shown as intermediaries in the record of rights became the direct

tenant under the State and so, the other intermediaries indicated in the record of rights or their successors are not at all co-sharers of Bhagyabati

Debi. So, they are not the necessary parties to the suit. Accordingly, I hold that the suit does not suffer at all from defect of parties. So, the findings

of the learned Lower Appellate Court relating to defect of parties cannot be supported at all.

14. The defendant No. 1 purchased the half portion of the suit land on 06-04-1962, that is, after issuance of the sale certificates in favour of the

plaintiff. Similarly, the defendant No. 2 got the rest half share of the suit lands by the deed of gift dated 14-02-1970 executed by Kunjabehari Bej

who was also a party of the earlier suit as discussed above. Thus, I find that the transaction in favour of the plaintiff was completed before the

execution of the deeds dated 06-04-1962 and 14-02-1970 in favour of the defendant nos.1 & 2 respectively. Thereafter, the plaintiff filed the suit

in 1971 when the State of West Bengal expressed vesting of the suit lands. The plaintiff took appropriate steps at that time and the Court of

Competent jurisdiction passed orders confirming title of the plaintiff in respect of the suit lands. Therefore, I hold, that the contention of the

defendants that plaintiff obtained the papers of certificates of sale and the writ of delivery of possession, and subsequent decrees in the Title Suit

No. 31/71 and appeal therefrom, by means of collusion, cannot be accepted.

15. As per evidence on record the defendant No. 4 has been possessing two decimals of land as licensee. In fact, the defendant Nos. 3 to 8 have

been possessing the North-West corner of the suit lands which is not a matter of discussion within the periphery of the suit. The question involving

in the suit i.e. whether the reliefs as sought for in the plaint by the plaintiff/appellant could be granted in respect of the suit lands mentioned in

schedule "Kha" of the plaint could well be decided. The plaintiff/appellant has claimed reliefs over 7 decimals of land out of 35 decimals of land

and such reliefs could be rightly granted without any partition. The contrary findings as observed by the learned Lower Appellate Court cannot be

supported.

16. The sale of the suit lands was held because of non-payment of the agricultural income tax and not for realizing rents in respect of the suit lands.

Such sale certificate proceedings were started in 1957 and 1958 that is after 01-06-1954 but the proceedings being related to recovery of

agricultural income tax and not of rent, I am of the view that such proceedings did not come within the mischief of Section 5B of the W.B.E.A.

Act, 1953. Under the circumstances, the decision reported in State of West Bengal Vs. Sailendra Nath Sen, as referred to by the learned

Advocate of the defendant, I hold, is not applicable in the instant situation.

17. The learned Advocate for the defendant respondent has also referred to the decision reported in AIR 1979, Calcutta, 50 to show that the suit

filed by an intermediary for ejectment etc. against the tenant is not maintainable after the date of vesting of the estate in the State. This decision, I

hold, is not also applicable in the instant case, because the suit lands should be taken as lands of the intermediary u/s 6(1)(c) of the W.B.E.A. Act,

1953. Moreover, the earlier title suit No. 31/71 has attained its finality. This question does not arise at all at present.

18. In view of the above observations I am of the view that the learned Lower Appellate Court failed to address the real issues of the suit.

Accordingly, I hold that the plaintiff/appellant had been able to establish his right, title, interest and possession over the suit lands as mentioned in

schedule "Kha" of the plaint. I hold that the learned Trial Judge rightly decreed the suit. The judgment and decree passed by the learned Lower

Appellate Court could not be sustained.

19. Accordingly, the appeal is allowed. The judgement and decree dated 13-03-1995 and 24-03-1995 respectively passed by the learned

Assistant District Judge, Tamluk in Title Appeal No. 41 of 1992 are hereby set aside. The judgment and decree dated 31-01-1992 and 06-02-

1992 respectively passed by the learned Munsif, Second Court, Tamluk in Title Suit No. 66 of 1989 stand affirmed.

20. Considering the circumstances, there will be no order as to cost.

21. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.