

**(2003) 11 CAL CK 0007**

**Calcutta High Court**

**Case No:** F.M.A.T. No. 2150 of 2003

Biswanath Maji

APPELLANT

Vs

Karuna Sindhu Dey and Others

RESPONDENT

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**Date of Decision:** Nov. 7, 2003

**Acts Referred:**

- West Bengal Land Reforms Act, 1955 - Section 18, 18(1), 18(2), 21(1), 21(3)

**Citation:** (2004) 2 CHN 188

**Hon'ble Judges:** Rajendra Nath Sinha, J; Dilip Kumar Seth, J

**Bench:** Division Bench

**Advocate:** Sabyasachi Bhattacharya and Keshab Chandra Das, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

D.K. Seth, J.

Deficit Court fee has since been put in on 6th of November, 2003 vide Filing No. A-14522. The defect thus stands removed.

2. This appeal arises out of an order of remand. The plaintiffs name was recorded in the record-of-rights as bargadar in respect of the suit property under the defendant. He claims a presumption u/s 21B of the Land Reforms Act and prayed for a declaration that he is a bargadar and for injunction restraining the respondent from disturbing his exercise of right of cultivation as bargadar on the suit property. In the suit the defendant, in his written statement, had disputed the status of the plaintiff as bargadar. Issues were framed. In the written statement, the defendant admitted that the plaintiff cultivates His land but disputed that he cultivates his land as bargadar. In the evidence the defendant admitted that the plaintiff is a bargadar under him in respect of the suit property. The Trial Court decreed the suit and granted the relief.

3. On appeal the learned Lower Appellate Court had found that the Trial Court had no jurisdiction in view of Section 21(3) of the Land Reforms Act and, therefore,

remanded the case to the learned Trial Court for making reference u/s 21(3) of the Land Reforms Act and then to proceed with the suit.

4. The learned Counsel for the appellant, at the time of admission, had raised an interesting question that the jurisdiction of the Civil Court has been taken away by Section 21 only to the extent it has been expressly provided in the said section and not beyond. If it is a question of admission and there is a scope of presumption u/s 21B, then according to him, even if disputed, there is no scope for any decision to be arrived at by the Court upon determination of the right. It is only when there is a dispute then only the question of reference would arise. According to him, in view of the fact that the name of the plaintiff was recorded in the record-of-rights and that the defendant had admitted in the written statement, that the plaintiff had been cultivating the land under him, therefore, the presumption of Section 21B is available to him and accordingly, there would be no question of determining the question since the question would remain no more a dispute referable u/s 21(3).

5. The learned Counsel for the appellant further contended that the Court cannot question the entries made in the record-of-rights. Once there is an entry in the record-of-rights as bargadar, there is no scope for any dispute to be decided or determined by the Court and in such a case Section 21(3) would not be attracted. According to him, that there was no dispute, is apparent from the fact that the defendant had admitted in course of his evidence that the plaintiff is a bargadar under him. Thus the order of remand is wholly erroneous.

6. Mr. Bhattacharya then contended that even if assuming but not admitting, the case is referable u/s 21(3), in that event, the Appellate Court itself could have done so instead of remanding the case so as to shorten the proceedings.

7. The entries made in the record-of-rights cannot be questioned by the Civil Court. The entry in the record-of-rights has a presumptive value. But such presumption is rebuttable. When such presumption is disputed, the matter comes u/s 21(3). Similarly, Section 21B raises a presumption coupled with the admission in the written statement that the plaintiff cultivates the defendant's land. The presumption, u/s 21B, would be effective and binding for the purpose of determining the question as to whether there is a relationship of bargadar between the parties. But Section 21 Sub-section (1) bars the jurisdiction of the Court to entertain a suit or proceedings if it relates to any matter covered u/s 18. Section 18(1) admittedly relates to the matters covered under Clauses (a) to (c) and not otherwise. But it can also determine the relationship if it arises incidentally in course of deciding a matter covered u/s 18 Sub-section (1) pursuant to the jurisdiction conferred upon it under Sub-section (2). Even though, the suit may not be barred under Sub-section (1) of Section 21 but since the question is as to whether a person is or is not a bargadar arises in connection with such suit, provision of Section 21(3) comes into play. The presumption, though available on the basis of the entry in the record-of-rights or u/s 21B or on account of admission made in the written

statement, but even then that presumption can be presumed only when the question is to be determined. But Sub-section (3) of Section 21 has taken away the jurisdiction of the Civil Court from determining the question altogether. In such a case, it has to refer the matter to the authority u/s 18(1). These presumptions would then be available before such authority while determining the dispute. Therefore, we are unable to agree with the contention of the learned Counsel for the appellant that in view of such presumption, it was not necessary to refer.

8. So far as the admission by the defendant in course of evidence that the plaintiff is a bargadar comes at the time of determining the dispute, which the Civil Court is otherwise incompetent in view of Section 21(3). Therefore, this admission will also not enable the Court to over-step Section 21(3) and assume jurisdiction, which it did not have initially. Section 21(3) cuts the jurisdiction of the Civil Court at the threshold. The taking of evidence followed by question of presumption is beyond this threshold, which the Civil Court is debarred from crossing.

9. Section 21(3) applies to suits and appeals. Therefore, the Appeal Court is also entitled to make the reference u/s 21(3). But when it is a question that the learned Trial Court had no jurisdiction, the Trial Court ought to have made the reference. The Appeal Court could refer the matter u/s 21(3) but only after setting aside the decree. As soon the decree is set aside, the Court has to remand the case, if on materials the Appeal Court is unable to determine the question. In this case in the absence of reference the Appeal Court could not decide the question. In this case, the Appellate Court has rightly remanded the suit and decided the reference to be made through the Trial Court. We, therefore, do not find any error in its exercise of jurisdiction in remanding the suit.

10. In the circumstances, we are not inclined to admit the appeal. The appeal is dismissed. We, however, do not make any observation with regard to the merits of the case, even on the question as to whether admission made in the evidence would enure to the benefit of the appellant. All questions are kept open to be decided by the appropriate authority and the learned Trial Court on remand in accordance with law and according to its own wisdom and discretion. However, we express our expectation that the learned Trial Court and the authority u/s 18 would determine the question as expeditiously as possible.

11. In view of the above order, the applications, being CAN 8456 of 2003 and CAN 8457 of 2003, stand dismissed as withdrawn.

12. Urgent xerox certified copy, if applied for, be supplied to the learned Counsel for the appellant, on priority basis.

R. N. Sinha, J.

I agree.