courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Sarat Chandra Mitra Vs Saradindu Mukherjee

Court: Calcutta High Court

Date of Decision: Aug. 31, 1960

Acts Referred: Bengal General Clauses Act, 1899 â€" Section 9
Bengal Tenancy Act, 1885 â€" Section 168A, 168A(1)
Civil Procedure Code, 1908 (CPC) â€" Section 47, 51
West Bengal Estates Acquisition Act, 1953 â€" Section 5B, 8

Citation: 65 CWN 1053 : (1962) 2 ILR (Cal) 347

Hon'ble Judges: P.N. Mookerjee, J; Niyogi, J

Bench: Division Bench

Advocate: Nagendra Mohan Saha, for the Appellant; Jitendra Nath Guha, Satyapriya Ghosh and Amal Kumar Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

P.N. Mookerjee, J.
This is the decree-holder''s appeal against the order of the learned Additional District Judge, Third Court, Alipore,

dismissing in appeal, his execution case, after giving effect to the judgment-debtors'' objection u/s 47 of the CPC to the effect that the present

execution was barred u/s 168A of the Bengal Tenancy Act, and/ or Section 8 of the West Bengal Estates Acquisition Act, 1953. The appeal

arises under the following circumstances:

Under the decree-holder Appellant, the Respondent judgment-debtors held a tenure. In respect of this tenure, rents fell into arrears, and, for

recovering the same, the present Appellant, as landlords, instituted Rent Suit No. 14 of 1953 in the Fifth Court of the Subordinate Judge at

Alipore. That suit was decreed on February 23, 1954, and the said decree was, first, put into execution in Rent Execution Case No. 6 of 1954 of

the same Court, in which execution case, the defaulting tenure was advertised for sale. The judgment-debtors, however, were able to put off the

sale by making payments from time to time to the tune of Rs. 2,000 which went towards part satisfaction of the decree, and as, eventually before

the sale could take place, the West Bengal Estates Acquisition Act of 1952 had come into force, no sale could be held, in view of the mandatory

provision (vide Section 5B) of the said statute. The execution case itself was, ultimately, dismissed for default on July 11, 1955. Thereafter, on

November 21, 1955, the present execution case, which was, eventually, registered as Rent Execution Case No. 4 of 1955, was started by the

decree-holder for realising his aforesaid decretal dues by attachment and sale of certain movables, belonging to the judgment-debtors. To this

execution, the judgment-debtors objected by filing an application u/s 47 of the Code of Civil Procedure, contending, infer alia, that in view of

Section 168A of the Bengal Tenancy Act, the present execution against their movables was not maintainable.

2. There were also certain other objections, taken by the judgment-debtor but, for our present purpose, those objections are not material, as, the

only point, now pressed, and which in effect, found favour with the learned Additional District Judge, relates to the question of maintainability of the

decree-holder''s application for execution, in view of the alleged bar u/s 168A of the Bengal Tenancy Act and/or Section 8 of the West Bengal

Estates Acquisition Act, 1953. This latter objection was urged only before the lower Appellate Court and there it succeeded with the result that the

decree-holder''s application for execution was dismissed by the learned Additional District Judge.

3. To the judgment-debtor''s objection, inter alia, u/s 168A of the Bengal Tenancy Act, the decree-holder''s rejoinder was that was protected

under the proviso to the said section inasmuch as, in the events, which have happened, the term of the tenancy has expired, and, accordingly, the

main part of the section (Section 168A(a)), which contains the statutory bar against execution of decrees for rent against properties other than the

defaulting tenure, was no longer applicable. The learned Subordinate Judge accepted the decree-holders''s contention on this point and, as no

other objection was raised before him, he rejected the judgment-debtors'' objection petition and directed the execution case to proceed.

4. On appeal by the judgment-debtors, the learned Additional District Judge has ultimately reversed the learned Subordinate Judge''s decision, not

apparently upon the ground that Section 168A of the Bengal Tenancy Act would apply and constitute a bar to the present execution in the

circumstances of this case, as, in his view too, the term of the tenancy must be deemed to have expired, having regard to the fact that, before the

present application, the defaulting tenure also had vested in the State and had been acquired by it under the provisions of the West Bengal Estates

Acquisition Act, 1953, and, accordingly, there was extinction of the said tenure, which was equivalent to expiration of the term of the tenancy. The

learned Additional District Judge, accordingly, held that the present case would come under the proviso to Section 168A(1)(a) and would be

protected from the mischief of the main part of the said section, but, added the learned Judge, u/s 8 of the West Bengal Estates Acquisition Act,

the tenure-holder would be entitled to compensation for acquisition of the tenure as aforesaid, which meant, according to the said learned Judge,

that the tenure would now be transformed into and represented by the said compensation money so that, in effect, the decree-holder would be

restricted to recover his decretal dues from and out of the same, that is, out of the said compensation money. In this view, where, unconsciously,

he was, in essence, applying the bar of Section 168A of the Bengal Tenancy Act, contrary to his earlier finding, the learned Additional District

Judge held that the present execution against the movables of the judgment-debtors, that is, against property other than the aforesaid compensation

money (in which form, in effect, according to the learned Judge, the tenure would be subsisting) was not maintainable in law and the execution case

must, accordingly, fail in limine. From this decision, the present appeal has been taken by the decree-holder Appellant.

5. In support of the appeal. Mr. Saha has referred us to the several previous decisions of this Court on the effect of the West Bengal Estates

Acquisition Act, 1953, including Section 8 thereof and also Section 5B, on or in relation to Section 168A of the Bengal Tenancy Act, and he has

contended that, apart from any other consideration, in view of Section 5B of the West Bengal Estates Acquisition Act, Section 168A of the Bengal

Tenancy Act can no longer be deemed to be operative, and must be held to have been impliedly repealed, and for this particular proposition, he

has relied strongly upon the Bench decision of this Court reported in Sm. Hiranmoyee Dassi and Anr. v. Anik Pal Choudhury and Ors. (1958) 62

C.W.N. 373. Even if the other decisions on the point, namely, Ahidhar Ghosh v. Sm. Nisu Bala Devi (1957) 62 C.N.W. 172 and Radha Mohan

Bagchi and Ors. v. Nalini Kanta Adhikary (1958) 62 C.W.N. 330 be held distinguishable from the instant case, the decision, relied on by Mr.

Saha, so far as the present question is concerned, is a direct decision and, with respect, we agree with the view, taken therein, as we shall explain it

hereinafter, of Section 5B of the West Bengal Estates Acquisition Act, as to its effect on Section 168A of the Bengal Tenancy Act. We are also

wholly unimpressed by Mr. Guha''s new argument on behalf of the Respondents (judgment-debtors) on this part of the case, to which we shall

presently refer. The decree-holder Appellant is, thus, prima facie, entitled to succeed in this appeal, unless the other ground, given by the learned

Additional District Judge, namely, that, in view of Section 8 of the West Bengal Estates Acquisition Act, the decree-holder should be limited to his

remedy against the compensation money be upheld. Unfortunately for the judgment-debtors, however, this point also appears to be covered by the

other Bench decision, cited and relied on by Mr. Saha, namely, Ahidhar Ghosh v. Sm. Nisu Bala Devi (1957) 62 C.N.W. 172 and here, again,

nothing has been placed before us, to convince us to hold contrary to that decision. We are, accordingly, of the view that this appeal should

succeed.

6. To complete our judgment, we shall now deal with the new argument, raised by Mr. Guha, on behalf of the judgment-debtors Respondents in

this Court. Mr. Guha does not seriously dispute that Section 168A of the Bengal Tenancy Act must be held to have been impliedly repealed by

Section 5B of West Bengal Estates Acquisition Act, 1953, as held in Sm. Hiranmoyee Dassi and Anr. v. Anik Pal Choudhury and Ors. (1958) 62

C.W.N. 373 and, although he attempted to advance some argument on the effect of Section 8 of the said Act and to support the point of view of

the learned Additional District Judge upon that question and upon the limitation of the right of the decree-holder as found by the said learned Judge

in the matter of execution of compensation money aforesaid, that argument is fully covered and answered against his clients by the above decision

in the case of Ahidhar Ghosh v. Sm. Nisu Bala Debi (Supra) and we reject it, namely, Mr. Guha''s said attempted argument on the authority of and

on the reasons, given in, that case. As a matter of fact, in the said case cited, that aspect of the matter was, inter alia, fully and exhaustively dealt

with by this Court and nothing useful can be added to that decision, and, indeed, as already stated, nothing substantial, could, at all, be urged

against it.

7. Mr. Guha then argued,-and this is his new argument in this case, that, although Section 168A of the Bengal Tenancy Act had been repealed by

Section 5B of the West Bengal Estates Acquisition Act, 1953, the effect of the said repeal would not be to revive the old law, namely, Section 51

of the Code of Civil Procedure, to the full extent, that is, as it was before the introduction of the now repealed Section 168A of the Bengal

Tenancy Act. For this proposition Mr. Guha placed strong reliance upon Section 9 of the Bengal General Clauses Act - which, incidentally

speaking, corresponds to Section 7 of the Central Act (Act X of 1897) and he referred us to the decision of this Court in the case of the Deputy

Legal Remembrancer v. Ahamad Ali (1897) 2 C.W.N. 1. Apart from anything else, however, it is clear that the quoted section, namely, Section 9

of the General Clauses Act, can have no application to cases of implied repeal which has to be found on construction and from the implication of a

particular section. The section (section 9) certainly, applies to cases of repeal of statutes, but it must, from its very nature, be restricted to cases of

express repeal and, in such cases, undoubtedly, mere repeal would not mean resurrection or revival of the old law.

8. The matter may, also, be looked at from another point of view. On the rights of the decree-holder under the general law or general provision,

namely, Section 51 of the Code of Civil Procedure, only a bar or embargo was placed by Section 168A of the Bengal Tenancy Act, putting

certain restrictions thereon, or, in other words, imposing certain restrictions or limitations to or upon the exercise of those rights in certain

circumstances. The effect of the implied repeal was to remove this bar and whatever might be the position when the repeal is express, it is, in our

opinion, not proper to hold that implied repeal also will have the effect, as contemplated in Section 9 of the Bengal General Clauses Act. This is,

strictly speaking, not a case of revival or resurrection but a case of temporary suspension and its cessation, or, to put it in the figurative language of

the Supreme Court, an instance of the now familiar ""eclipse theory"". In that view, the new argument of Mr. Guha, based oh Section 9 of the Bengal

General Clauses Act (Bengal Act I of 1899) cannot be accepted and, apart from it, the instant case will be wholly covered by the uniform

decisions of this Court, cited hereinbefore.

9. The above view as to the effect of repeal of statutes is simply supported by the observations of Maxwell in his well-known treatise on the

Interpretation of Statutes, Tenth Edition (1953), pp. 402-3, where the learned author, speaking, inter alia, on the above subject expresses himself

as follows:

Where an Act, repealing, in whole or in part, a former Act, is itself repealed, the last repeal does not revive the Act or provisions before repeated,

unless words be added reviving them. It is doubtful whether this rule applies to a repeal by implication but it seems not to apply where the first Act

was only modified by the second by the addition of conditions and the enactment which imposed the conditions was, itself, afterwards repealed.

Semble, in such a case the original enactment would revive.

10. It is to be remembered, further, that the new Section 5B of the West Bengal Estates Acquisition Act had only the effect of forbidding sale of

the defaulting tenure or holding for arrears of rent or in other words, had the effect of repealing by implication Section 168A of the Bengal Tenancy

Act, and, for the matter of that, the general law, too, that is, as contained in Section 51 of the Code of Civil Procedure, to the extent that the same

permitted or authorised such sale for such arrears. The implied repeal, as held in Sm. Hiranmoyee Dassi and Anr. v. Anik Pal Chaudhury and Ors.

(Supra), must be understood in that light and that decision and the theory, as applied therein, should not be construed differently or as having any

greater or wider scope. The result will be that subject to the above restriction, both Section 168A of the Bengal Tenancy Act and Section 51 of

the CPC will retain their full effect even in cases of execution of decrees of rent and all remedies, open to the decree-holder, other than sale of the

particular defaulting tenure or holding u/s 51 of the CPC and the proviso to Section 168A(1)(a) of the Bengal Tenancy Act, will remain fully

available to him, and if, therefore, where the vesting of the particular estate or tenure has taken place before the particular application for execution,

so that, on the theory of merger, the case would fall within the proviso, and not the main part, of Section 168A(1)(a) its reappeal by implication, as

aforesaid, would not affect the remedies of the decree-holder other than the remedy by sale of the defaulting tenure or holding, and, as, further,

these remedies remained, and were available, both u/s 51 of the Code and Section 168A(1)(a) of the Bengal Tenancy Act by reason of its

proviso, it will not be the case of repeal of a repealing enactment and would not attract Section 9 of the Bengal General Clauses Act.

11. On either view, then, Mr. Guha''s new argument would fail, and, as the three cases of this Court, cited above, namely, Ahidhar Ghosh v. Sm.

Nisu Bala Devi (Supra), Radha Mohan Bagchi and Ors. v. Nalini Kanta Adhikary (Supra) and Sm. Hiranmayee Dassi and Anr. v. Anik Pal

Choudhury and Ors. (Supra) as explained hereinbefore appear to have been correctly decided, the Appellant''s instant appeal cannot be resisted.

One word here about a particular aspect of the matter, which may require some explanation. In the instant case before us, the initial application for

execution, which, of course, resulted in part satisfaction of the present decree under execution to the extent of Rs. 2,000 but not by sale of the

tenure, was filed prior to the vesting of estates under the West Bengal Estates Acquisition Act. The present application for execution, however,

was filed after the said vesting. This may distinguish it from the case, reported in Ahidhar Ghose v. Sm. Nisu Bala Devi (Supra) on this particular

point but, even then, the instant case will plainly be covered by the other decision, namely, Radha Mohan Bagchi and Ors. v. Nalini Katna

Adhikary (Supra) and, as for effective merger for purposes of the proviso, law only requires that such merger must have taken place prior to the

particular application for execution (vide Sree Sree Iswar Radha Ballav Jew Thakur v. Mahima Ranjan Roy and Ors. (1945) 49 C.W.N. 629 or,

at the most, that there was, prior to it, no sale of the defaulting tenure in execution, satisfying the decree in part, the present case would clearly fall

within the aforesaid statutory proviso. This disposes of all the arguments of Mr. Guha against the Appellant''s claim and, as none of those

arguments can be accepted, that claim must succeed.

12. In the result, then, this appeal, would succeed, the order of the learned Additional District Judge, dismissing the decree holder''s application for

execution will be set aside and the order of the learned Subordinate Judge, over-ruling the judgment-debtor''s objection and allowing the decree-

holder''s execution case to proceed, will be restored.

13. The decree-holder Appellant will be entitled to his costs in this appeal and in the courts below too.

Niyogi, J.

14. I agree.