courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 05/11/2025

(2011) 3 CHN 723

Calcutta High Court

Case No: W.P.L.R.T. No. 140 of 2005

Sisir Kumar Adak — APPELLANT

Vs

Amitava Singha — RESPONDENT

Date of Decision: June 22, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 227
- West Bengal Land Reforms Act, 1955 - Section 8, 9, 9(6)

Citation: (2011) 3 CHN 723

Hon'ble Judges: Pratap Kumar Ray, J; Md. Abdul Ghani, J

Bench: Division Bench

Advocate: Bhaskar Ch. Manna, for the Appellant; Sardar Amjad Ali and Ipsita Chowdhury, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.
Heard learned Advocates appearing for the parties.

2. Challenge has been made in this writ application assailing the order dated 21st June, 2002 passed in O.A. No.3306 of 2001 (LRTT) by the learned Tribunal below, on the question of jurisdiction of said Tribunal to adjudicate any application wherein the decree of the Civil Court is under challenge. It appears from the impugned order that a pre-emption application was filed u/s 8 of the West Bengal Land Reforms Act, 1955 and therefrom a Misc. Appeal laid by the aggrieved party and assailing the order passed in the preemption appeal, the original application was moved. The question of jurisdiction of the Tribunal to consider the grievance of any party assailing the order passed in pre-emption appeal, is not res Integra. Regarding jurisdiction of learned Tribunal below to adjudicate any application assailing the order passed u/s 9 said Act by learned District Judge in pre-emption appeal, one of us Pratap Kumar Ray, J. in the case of Sk. Samsul

Huda vs. Mosharaf Hussain reported in 2002 WBLR (Cal) 654 which was heard along with other Civil Revision matters filed under Article 227 of the Constitution of India expressed the view that remedy of aggrieved party against the order of pre-emption appeal was to assail the same under Article 227 of the Constitution of India and Tribunal had no jurisdiction to interfere with the order of the District Judge. In the judgment Sk. Samsul Huda vs. Mosharaf Husain (supra) the Court discussed the meaning of the word "authority" and held that the Court of ld. District Judge, cannot be an authority under W.B. Land Reforms and Tenancy Tribunal and District Judge under was not a persona designata, but a Court, within the frame work of the Bengal, Agra and Assam Civil Courts Act, 1887. As there was a conflict in the opinion with another Hon"ble Judge of this Court, who decided the case Kashinath Mondal & Ors. vs. Bani Ballau Biswas & Ors. reported in 2001 (2) CLJ 319, holding, inter alia, that the revisional application u/s 115 of the CPC was not maintainable against the order passed by the ld. District Judge in an appeal, u/s 9 of the said Act of 1955, one of us Pratap Kumar Ray, J. referred the matter to the larger Bench for decision by discussing in details the legal situation in the said case Sk. Samsul Huda vs. Mosharaf Hussain (supra). The Division Bench comprising of A.K. Mathur, CJ., as His Lordship then was and Jayanta Kumar Biswas, J. heard the matter which is reported under cause title Pashupati Adhikary vs. Pradyut Kumar reported 2003(4) CHN 347 only with other matters and held that view taken in the case Sk. Samsul Huda vs. Mosharaf Hussain (supra) was right view.

3. The said Division Bench answered the issue in paragraph 27 of the report which reads such:

After having considered rival submissions of the parties, we are of the opinion that the orders passed by the learned District Judge or Additional District Judge u/s 9(6) of the Act of 1955 will be amenable to revisional jurisdiction of High Court u/s 115 of the Constitution (sic) CPC) and the exclusion clause in the Act of 1997 will not be applicable so far as orders passed by the Judicial Authority are concerned. However, this will not prevent the State Government from withdrawing the power conferred on the "Munsif and the "District Judge" to decide the pre-emption matter and restore it back to the revenue officers that will automatically attract section 8 of the Act of 1997.

4. Having regard to the said legal position, we are of the view that learned Tribunal below had no jurisdiction to entertain the original application assailing the order of ld. District Judge passed in an appeal u/s 9 of the West Bengal Land Reforms Act, 1955. Hence the impugned order before us is set aside and quashed on the ground of lack of jurisdiction of the learned Tribunal.

5. This application accordingly stands allowed by quashing the impugned order of the learned Tribunal.

6. Urgent xerox certified copy of this order, if applied for, be given to the parties on priority basis.

Md. Abdul Ghani, J.

7. I agree.