

Subodh Gopal Bose Vs Sushil Kumar Sen

Court: Calcutta High Court

Date of Decision: May 17, 1954

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 2 Rule 2

Citation: (1956) 2 ILR (Cal) 556

Hon'ble Judges: Renupada Mukherjee, J; Mookerjee, J

Bench: Division Bench

Advocate: Atul Chandra Gupta and Joy Gopal Ghose, for the Appellant; Radha Benode Pal and Chandra Narayan Laik for Respondents Nos. 1 and 2, Apurba Charan Mukherjee and Provas Chandra Basu for Respondent No. 3 in Appeal No. 129 of 1946, Pramatha Nath Mitra and Syamadas Bhattacharyya, in Appeal No. 5 of 1948 and Sambhu Nath Banerjee in Appeal No. 150 of 1948, for the Respondent

Judgement

Mookerjee, J.

The Supreme Court having decided in *The State of West Bengal v. Subodh Gopal Basu* (1954) S.C.A. 65 that the

amendments introduced by the Bengal Land-Revenue Sales West Bengal Amendment) Act, 1950 (West Bengal Act VII of 1950), were intra

vires of the Constitution, the point for decision in all the three appeals now before us is as to what would be the nature of the order to be passed by

this Court now. Although the facts are slightly different, the decision depends upon the interpretation of Section 7 of the amending Act. We would

indicate in brief the relevant facts in each of the three appeals and then deal with the principles underlying and the interpretation of Section 7 of the

amending Act.

Appeal from Original Decree No. 129 of 1946.

2. This appeal arises out of a suit brought by the Plaintiff-Appellant for recovery of khas possession of certain plots described in the schedule to

the plaint on declaration of the Plaintiff's title. The defence was that the lands in suit were not within the mal assets of the touzi; alternatively, the

interest of the Defendant was not an encumbrance u/s 37 of Act XI of 1859. There was a further alternative defence based upon the exceptions to

Section 37 of Act XI of 1859, that the tenures were protected ones under such exceptions. The suit was also claimed to be otherwise barred.

3. The learned subordinate judge came to the conclusion that the lands in dispute except a six-anna share of nine cottas out of the total area

included did not form part of the mal assets of the touzi. The learned subordinate judge further held that the interest of the Defendants was not

liable to be annulled. It was also held inter alia that the original Defendant was not a raiyat and could not claim protection from ejectment though

the question of lands not forming a part of the mal assets had been decided against the Defendant. The suit was decreed in part and the title of the

Plaintiff was declared to a six-anna interest in nine cottas of the lands in dispute. The rest of the claim was dismissed.

4. This appeal has been preferred by the Plaintiff so far as the principal reliefs claimed by him are concerned which had been disallowed by the

lower court. A memorandum of cross-objection also has been filed on behalf of the Defendant in respect of the decision which is in favour of the

Plaintiff.

Appeal from Original Decree No. 5 of 1948.

5. This appeal arises out of a suit brought by the Plaintiff-Appellant as the purchaser in a revenue sale for declaration of title to the plots described

in the schedule to the plaint and for a partial ejectment, i.e., getting joint khas possession along with Defendant No. 1. Various defences were

raised on behalf of the Defendant. There was a denial of the notice alleged to have been served annulling the encumbrances. It was further

contended that even if the provisions of Section 37 of Act XI of 1859 were attracted the Defendant would come within the exemption clause, and

the Plaintiff's claim was liable to be dismissed.

6. During the hearing before the learned subordinate judge, the only defence which was urged was the protection under Clause (4) of Section 37

of Act XI of 1859. The property in question was found to be a garden with a boundary wall and certain buildings. The property also included

certain tanks. The learned subordinate judge found that the Defendant came within the exemption clause of Section 37. The learned subordinate

judge also found in favour of the Defendant and against the Plaintiff, with regard to certain items the claim of the Plaintiff being barred by res

judicata. The Plaintiff's title with regard to one sixth share of the zamindari interest was declared. The rest of the claim was dismissed. The Plaintiff

alone has preferred the appeal. There is no cross-objection filed on behalf of the Defendant.

Appeal from Original Decree No. 150 of 1948.

7. This also is an appeal on behalf of the same Plaintiff who has claimed in the exercise of his right as a revenue sale purchaser for declaration of his

title and for joint possession of certain items of property described in the schedule to the plaint. The Plaintiff also claimed that notices annulling the

encumbrances had duly been served. Various defences were raised including objections under Rule 2 of Order II of the Code of Civil Procedure,

that the Plaintiff's claim was barred by res judicata, and that the Defendants were protected under the exception to Section 37 of the Revenue

Sales Act. There was a further objection that the properties in suit were not within the mal assets of the permanently settled estate.

8. The learned subordinate judge came to the conclusion that the defence about the properties in suit not being included within the mal assets of the

permanently settled estate cannot be accepted. The objection under Order II, Rule 2 was held against the Defendant. The learned subordinate

judge further came to the conclusion that even if the properties in suit were to be found within the mal assets of the Plaintiff's estate, they were

protected under one or more of the different clauses of Section 37 of the Land-Revenue Sales Act.

9. The Plaintiff has come up to this Court on applal.

10. In each of the three suits out of which the respective appeal arises the Plaintiff is one who had purchased an interest in tauzi No. 6 of the 24-

Perganas Collectorate which had been sold for arrears of revenue. The Plaintiff claimed that he having purchased the sixteen annas share of the

said touzi he had obtained it free of all encumbrances with the authority to avoid and annul all intermediate interests except those which are

protected u/s 37 of Act XI of 1859. The Plaintiff claimed that the property in each of the three suits was not so protected and that as notices of

annulment had been duly served, he was entitled to get khas possession or joint possession with other co-sharers as indicated above.

11. The three suits were filed between 1944 and 1945, and respective judgments delivered between March, 1946 and April, 1948 Appeals were

filed in this Court between April, 1946 and July, 1948.

12. When all these three appeals were pending in this Court, the Bengal Land-Revenue Sales (West Bengal Amendment) Act, 1950 (West Bengal

Act VII of 1950), was passed by the West Bengal Legislature and published in the Calcutta Gazette on March 15, 1950, Section 7 of this

amending Act is in the following terms:

7(1)(a) Every suit or proceeding for the ejectment of any person from any land in pursuance of Section 37 or Section 52 of the said Act, and

(b) every appeal or application for review or revision arising out of such suit or proceeding, pending at the date of the commencement of this Act

shall, if the suit, proceeding, appeal or application could not have been validly instituted, preferred or made had this Act been in operation at the

date of the institution, the preferring or the making thereof, abate.

(2) Every decree passed or order made, before the date of commencement of this Act, for the ejectment of any person from any land in prusance

of Section 37 or Section 52 of the said Act shall, if the decree or order could not have been validly passed or made had this Act been in operation

at the date of the passing or making thereof, be void:

Provided that nothing in this section shall affect any decree or order in execution whereof the possession of the land in respect of which the decree

or order was passed or made, has already been delivered before the date of commencement of this Act.

(3) Whenever any suit, proceeding, appeal or application abates under Sub-section (1) or any decree or order becomes void under Sub-section

(2) all fees paid under the Court-fees Act, 1870, shall be refunded to the parties by whom the same were respectively paid.

13. As a result of the passing of this amending Act Section 37 of the Bengal Land-Revenue Sales Act of 1859 was substituted by a new section.

Under this new provision, the rights of the purchaser in a revenue sale to annual encumbrances as also to get khas possession of certain kinds of

properties have been substantially modified and some rights have been taken away. This Act has been given retrospective effect. The question

which had arisen at an earlier stage as to whether the retrospective effect given particularly in Section 7 of the amending Act was ultra vires the

Constitution has been finally settled by the Supreme Court. We are now concerned with the effect of the provision contained in that section.

14. It is incontrovertible that each one of the three suits out of which the three appeals arises was a suit for ejectment of a person from certain lands

in pursuance of Section 37 of Act XI of 1859 as it originally stood before the amendment in 1950. Sub-section (1) of Section 7 refers to such suits

and to appeals or applications for review or revision arising out of sixth suits or proceedings. As a result of the new provisions contained in Section

7 of the amending Act, the appeals now pending in this Court had abated. A doubt has been raised as to what would be the effect of these new

provisions so far as cross-objections filed by the Defendant are concerned and also to the judgment and decree passed by the trial court as

regards the decision on certain points which yet against the Defendant.

15. It was contended on behalf of each of the Defendants that the findings which had been reached by the learned subordinate judge in his favour

and against the Plaintiff in the respective cases should stand. Apart from the inequitable nature of the contention, we are in the first place to

consider whether on the words used in the section, it was the intention of the legislature to keep alive a part of the decree which had been made in

a suit which could not have been brought on the date when it was so filed had the amending Act been in force on that date.

16. Sub-section (1) of Section 7 is not very happily worded. Clause (a) of Sub-section (1) refers to original suits or proceedings; Clause (b) refers

to appeals and applications for review or revision pending at that time. The last five lines which govern these two clauses did not differentiate

between the two types of cases, but lumped together the effect of the new amendment with the result that the suit, proceeding, appeal or

application abated. In our view, when there is a reference to a pending appeal or application for review or revision, the suit itself is deemed to be

pending still, and all the proceedings which have been initiated, from the beginning based on a claim dependent upon the rights given u/s 37 of Act

XI of 1859 abate as a result of this new provision.

17. Sub-section (2) of Section 7 deals with only a decree or order made by any court for the ejectment of any person from any land. This Sub-

section does not deal with such orders or directions as might have been given not for the ejectment of a particular person, but for declaration of

title or any other relief which may arise consequentially in a suit which is primarily brought u/s 37 of Act XI of 1859.

18. If the wider meaning as we have indicated be given to the provisions contained in Sub-section (1) of Section 7, the consequences will be that

under Sub-section (2) of the same section certain portions of the decree will become void provided that it is not affected by the proviso to that

Sub-section whereas other portions of the decree or order may be kept alive. Such a position will create anomaly and would lead to manifest

injustice. Whether such considerations are relevant or pertinent in interpreting the provisions contained in Section 7 will be considered later on. We

point out, however, that the provisions contained in Sub-section (3) of Section 7 support the interpretation which we have put to Sub-section (1)

of Section 7.

19. Sub-section (3) provides that when a suit, proceeding, appeal or application abates under Sub-section (1) all fees paid under the Court-fees

Act shall be refunded to the parties by whom the same were respectively paid. Here also whenever any decree or order becomes void under Sub-

section (2) of Section 7 a similar result takes effect. There is no differentiation made in Sub-section (3) between an abatement of an appeal only

keeping alive the proceedings in the trial court and an order which becomes void in its entirety and an order which becomes void only partially. It is

impossible to allocate the amount of court-fees as between two sets of circumstances when only an appeal abates, and the suit in the trial court

remains, or when a part of the decree or order becomes void the remaining portion is kept alive.

20. An interpretation of Sub-section (1) of Section 7 giving it restricted meaning would not lead to a harmonious construction. When the language

used is not a very happy one and the words used are such as to make it doubtful or ambiguous, it is permissible to introduce elements of public

policy or moral justice and also to find out what the intention of the legislature was.

21. It has also been uniformly held that when one of the constructions of words which are not of a very clear import leads to absurdity such a

construction should not be adopted. The rules of interpretation are intended to guide the court and further the ends of justice rather than to defeat

them.

22. If we look to the purpose and the effect in general of the amending Act, there is no room for doubt that the legislature intended to put an end to

all the rights which had been given to revenue sale purchasers u/s 36 of Act XI of 1859 with retrospective effect and in all pending matters subject

to a few exceptions. If the new provisions are attracted at the appellate stage and to the appeal only leaving it to the Defendant-Respondent the

option of continuing the cross-objection on the footing that even if the appeal is dismissed the Respondent has the right to proceed with the cross-

objection as an independent appeal, the intentions of the legislature will prima facie be defeated. Taking away all the rights of the Plaintiff in a suit

which had been brought by him and keeping alive the rights of the Defendant in such a suit, and also taking away from the Plaintiff all opportunities

of going up to higher Courts which he had under the old law, is a position which unless clearly expressed by the legislature the courts will not be

justified in giving effect to such an interpretation. A Plaintiff is unsuited because of the amendment introduced in 1950 and cannot be allowed to

have the benefit of the judgment and decree so far as other points arising in the suit are concerned but is the Defendant to be allowed to preserve

that part of the decision which is in his favour? Take for instance the position in two of the appeal before us. The finding that some of the plots in

sprit were no included within the mal assets of the permanently settled estate, if allowed to remain in force, taking away the rights of the Plaintiff at

the same time to continue an appeal which was pending will create an unreasonable situation and such; position may be allowed only if the

legislature provide accordingly in a clear and unambiguous language. The police as may be divined from the context of the amending Act, to out

mind, leaves no room for doubt that the proceedings which has been initiated by the Plaintiff on the strength of the rights given under the original

Section 37 of Act XI of 1859 must be deemed not to have been filed at all. The rights, if any, of the contesting parties, cannot be deemed to have

been before the court at all.

23. The proper interpretation, in our view, therefore, is that during the pendency whether of a suit or of an appeal application for review or revision

arising out of a suit proceeding for the ejectment of any person from any land pursuance of Section 37 or Section 52 of Act XI of 1859 be pending

on the date the amending Act VII of 1950 came into force the entire proceedings from the initial stage, viz., the filing of the plaint will abate.

24. Sub-section (2) prima facie deals with matters where a decree in ejectment has already been made. Even in such cases, where there are no

other proceedings pending, the Plaintiff-decree holder will lose the right under the decree unless he comes within the proviso to Sub-section (2) of

Section 7, i.e., only if the Plaintiff-decree-holder has already obtained delivery of possession before the commencement of the Act that the first

paragraph of Sub-section (2) will not come into play. Sub-section (2) of Section 7, therefore, deals only with the decree and order for ejectment

which might have been passed, and not to the proceedings themselves whether at the initial stage in the trial court or at the appellate or revisional

stage. These latter are dealt with in Sub-section (1) of Section 7.

25. Sub-section (3) of Section 7 entitles the suitor to a refund of all court-fees paid in either of the cases covered by Sub-section (1) or Sub-

section (2).

26. Our attention has not been drawn to any decision on the points now in issue except that in *Manindra Nath Dinda v. Panchanan Mondal* (1950)

55 C.W.N. 171. A Division Bench of this Court gave a direction that as a result, of the passing of the amending Act of 1950 appeals stood

abated. There was no question raised, and there is no decision in that case as to whether the entire suit, including the appeal, abates, or the appeal

only abates. In that case there were two suits filed, one by the revenue sale purchaser and the other by the tenure-holder, and the reliefs prayed for

did not really arise on the effect of Section 37 as it originally stood as part of the Revenue Sales Act. The real question in the litigation between the

parties there was about the effect of the subsequent settlement which had been obtained by the tenure-holder. As there is no decision on the points

which have, been raised before us we have proceeded to consider the point as one of the first impression.

27. The result, therefore, is that in each of the three appeals the suit and the appeal (and where there is cross-objection, cross-objection also) have

abated. There has been no decree passed in ejectment in any of the three suits. It is not necessary, therefore, to give any direction Under Sub-

section (2) of Section 7.

28. As a result of the suit and the appeal and the cross-objection having abated all the parties are entitled under Sub-section (3) of Section 7 of the

amending Act of 1950 to get a refund of all the fees paid under the Court-fees Act of 1870 whether in the trial court, or in this Court throughout

this litigation. Certificates will be issued under the signature of the Registrar mentioning the amount to which each one of the parties will be entitled,

29. There will be no order as to costs in this Court.

Renupada Mukherjee, J.

30. I agree.