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(1961) 07 CAL CK 0016

Calcutta High Court

Case No: Civil Revision Case No"s. 2770 and 2771 of 1960

Jadu Nath Roy and Others	APPELLANT
Vs	
Lal Mohan Malik and Others	RESPONDENT

Date of Decision: July 28, 1961

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- West Bengal Estates Acquisition Act, 1953 - Section 39, 44, 45, 45A, 46
- West Bengal Land Reforms Act, 1955 - Section 17, 18, 18(2), 19, 21

Citation: 66 CWN 88

Hon'ble Judges: Bhattacharya, J

Bench: Single Bench

Advocate: Bankim Chandra Banerjee and Gaganendra Krishna Deb, for the Appellant;Bansarilal Sarkar and J. Majumdar, Addl. Govt. Pleader, for the Respondent

Judgement

Bhattacharya, J.
Landlords are the petitioners here u/s 115 of the Civil Procedure Code. They were defendants in suits brought by the opposite parties. Their grievance is that the learned Munsif of Chinsurah should have held that the plaintiff opposite parties" suits would be barred first u/s 21 of the West Bengal Land Reforms Act, 1955, and secondly u/s 46 of the West Bengal Estates Acquisition Act, 1953, instead of deciding the two preliminary issues against the defendant-petitioners. In testing the objection regarding applicability of section 21 of the West Bengal Land Reforms Act the first thing to notice is that previously the plaintiff opposite parties had been adjudged bargadars in connection with a dispute regarding the produce of 1362 B.S. The learned Appellate Officer after hearing the appeal of the Bhagchas Officer in this connection upheld the contention of the present petitioners to the effect that the present opposite parties were bargadars, overruling the claim of the latter to tennancy right. In the relevant suits the plaintiff opposite parties claimed inter alia

declaration of tenancy right by contract and alternatively acquisition of tenancy right by adverse possession besides confirmation of title. There is also a prayer in the suit for permanent injunction restraining the defendants from dispossessing the plaintiffs or putting any obstacles in the matter of their possession.

2. Now, section 21 of the West Bengal Land Reforms Act. 1955 provides inter alia that no Civil Court shall entertain any suit or proceeding in respect of any matter mentioned in sections 17 and 18. Section 18 in conferring exclusive jurisdiction on the Bhagchas Officer clearly refers to an existing dispute regarding (a) division or delivery of the produce, (b) termination of cultivation by the bargadar (c) place of storing or thrashing the produce. Section 18(2) also lays down: "If in deciding any dispute referred to in sub-section (1), any question arises as to whether a person is a bargadar or not and to whom the share of the produce is deliverable, such question shall be determined by the Officer or Authority mentioned in sub-section (1) :" The existence of a "dispute", therefore, is a sine qua non of the applicability of section 21, and consequently the bar to the jurisdiction of the Civil Court must be related to the existence of such a dispute. When there is no such "dispute", clearly the bar would not be applicable. It cannot be said, therefore, that the suit, as framed, will be barred u/s 21 of the Act. This, however, does not mean that the order or orders passed by the Bhagchas Officer or the Appellate Authority can be questioned in these or any other suit, for section 21 also lays down that "save as provided in section 19, no order or other proceedings whatsoever under this chapter shall be questioned in any Civil Court". Consequently, no such previous order or orders can be challenged in the Civil Court in reference to the dispute decided therein. If there be any proceeding pending, that also, cannot be impugned in the Civil Court, and the Officer or Authority will be fully competent to carry on the proceedings. It is not necessary to decide in this connection, at this stage, what the effect of any declaration by the Civil Court would be in reference to any future proceedings, that is, proceedings which may be filed or decided after the plaintiff gets, if at all, the declaration prayed for. So far as entertaining the suits is concerned, however, as indicated above, since the prayer portion relating to declaration of tenancy right does not purport prima facie to affect any "dispute" section 21 will not be a bar. But it must be distinctly understood that the prayer for injunction cannot in any way affect any decision taken by the Bhagchas Officer or the Appellate Officer or any order or orders in an execution proceeding that may be pending or may be filed hereafter in connection with pending proceedings. Subject to the limitations as pointed out above, section 21 of the Act will not be a bar.

3. The next question is whether these suits are barred u/s 46 of the West Bengal Estates Acquisition Act, 1953. After some amendments the section as it stands now reads as follows:

Where an order has been made under sub-section (1) of section 39 directing the preparation or revision of a record-of-rights, no Civil Court shall ***entertain any suit or application for the determination of rent or determination of the status of any tenant or the incidents of any tenancy to which the record-of-rights relates, and (if any suit or

application, in which any of the aforesaid matters is in issue, is pending) before a Civil Court (on the date of such order, it shall be stayed and it shall, on the expiry of the period prescribed for an appeal under sub-section (3) of section 44 or when an appeal has been filed under that sub-section, as the case may be, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters).

4. Formerly after the clause "no civil Court shall" the following words appeared:

until after the final publication of the record-of-rights under sub-section (2) of section 44.

5. These words were omitted, with retrospective effect, by a second Amendment (West Bengal Act XXV of 1957).

6. Sub-section 4 of section 44 is to the following effect:

(4) Every entry in the record-of-rights finally published under sub-section (2) including an entry revised under sub-section (2a) or corrected u/s 45 or section 45A shall, subject to any modification by an order on appeal under sub-section (3), be presumed to be correct until it is proved by evidence to be incorrect.

7. Formerly sub-section (4) of section 44 did not contain the expression "until it is proved by evidence to be incorrect". This background will be necessary in considering the effect particularly of a decision reported in (1) 63 C.W.N. 521 (Dhirendra Nuth Bose v. Su shil Kumar Safui).

8. Before the present suits were instituted not only was an order made directing the preparation or revision of record-of-rights under subsection (1) of section 39 but also the record-of-rights had been finally published, and the entries therein go against the plaintiff opposite parties. In (1) Dhirendra Nath Bose v. Sushil Kumar Saful referred to above it was held that the provisions of section 46 applied. But the facts appear to be somewhat different in that case. There, as was pointed out by their Lordships of the Division Bench, was a dispute as regards the incidents of the tenancy- whether it was bemeadi settlement or one given from year to year, the duration of which had already expired. In that case reference was made to an unreported decision (2) (Civil Revision Case No. 3449 of 1955; Kishori Mondal and others v. Sheik Bhutu Gain). In Kishori Mondal"s case also it was held that for the proper decision of the case the Court would necessarily have to determine the status of the tenant and the incidents of the tenancy and, therefore, it would be a suit within the class of suits mentioned in section 46. In the instant case, however, it cannot be said at this stage that it would be necessary to determine the status of the tenant or the incidents of the tenancy. The declaration that is prayed for is merely one relating to tenancy right simpliciter. It is nobody"s case that the alleged tenancy right has come to an end by operation of law. A tenancy right is claimed as distinguished from the right of mere bargadar. To decide this portion of the suit a decision on status or the incidents would not arise so far as one may foresee now. In (3) Lala Gangaram Vs. Krishna Gopal Jhunjhunwala and Others, , a case decided by a division Bench and

referred to in Dhirendra''s case above, the following observations inter alia were made:

We cannot accept the view that any suit which may be filed relating to any matter to be included in a record-of-rights must be stayed u/s 46 of the Act, nor can we accept the view that the question as to whether or not a person is a tenant comes within the words ''status of any tenant'' or within the words ''incidents of any tenancy''. The question as to the status of the tenant or the incidents of the tenancy in our opinion presupposes an existence of a tenancy. In other words, the question of the status of a tenant or the incidents of any tenancy can only arise on the admitted fact of a tenancy.

9. Dhirendra''s case was distinguished in (4) Kalipada Mandal and Others Vs. The State of West Bengal and Others, by G. K. Mitter, J., laying stress particularly on the addition of the words in subsection (4) of section 44, ''until it is proved by evidence to be incorrect''. It was noticed that the bar of section 46 operated only until the final publication of the record-of-rights and clearly showed that a suit would be maintainable in certain circumstances. That in the absence of a dispute regarding the status of the tenant or the incidents of the tenancy a suit would not be barred u/s 46 was held in (5) Benimadhav Ghose v. Anila Bala Ghose, (61 C.W.N. 349) by Renupada Mukherjee, J. The distinction was emphasised in (6) Panchanan Pramanick v. Kishori Mohan Banerjee (64 C.W.N. 83) by P. N. Mookerjee, J.

10. On an anxious consideration of the facts and circumstances of the case it is tentatively held that section 46 would not be a bar prima facie. But since at this stage, when the merits of the case have not been gone into, it is not possible to decide if without deciding the status of the tenant or the incident of the tenancy appropriate relief can be granted in the suit in question, the Court is of the opinion that the final decision of the relevant issue be kept open in the trial court so long as the judgment on the merits of the entire case is not given, and it is so ordered. The Rules are disposed of accordingly. There will be no order as to costs in the circumstances.