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# Manmotha Nath Koyal Vs Hazi Sheikh Khayer Ali and Others

**Court:** Calcutta High Court

**Date of Decision:** Sept. 29, 1961

**Acts Referred:** West Bengal Estates Acquisition Act, 1953 â€" Section 3, 39, 39(1), 44, 46

**Citation:** 66 CWN 121

**Hon'ble Judges:** P.N. Mookerjee, J; Amaresh Roy, J

**Bench:** Division Bench

**Advocate:** Profulla Kumar Roy and Phakir Chandra Haldar, for the Appellant;Purnendu Sekhar Basu and Monohar Chatterjee allowed to retire, for the Respondent

## Judgement

P.N. Mookerjee, J.
This Rule raises a short but difficult question. It is unfortunate that we have to hear and decide this Rule ex parte but

that cannot be helped, as Mr. Basu, who appeared at one stage for the opposite parties, retired from this case with our permission in view of the

fact that his clients had taken away the papers from him and had not cared to return them in spite of several reminders. The opposite parties have

not made any separate arrangement for their representation in this Rule. Mr. Roy, however, who appears for the petitioner, has, with his usual

fairness, placed before us all the relevant, decisions on the point at issue and discussed the matter in all its relevant aspects, not merely from the

point of view of his client but with a view to assist the Court to come to a just and proper decision on this complex but oft-recurring point of law:

The point involved raises the question of construction and scope of sec. 46 of the West Bengal Estates Acquisition Act. That section, as it now

stands, reads as follows:

46. Bar to jurisdiction of Civil Court in respect of certain matters-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 matter.

Explanation-In this section suit includes an appeal.

The instant suit, of which the petitioner seeks stay under the aforesaid section, is a suit for declaration of title, confirmation of possession and

permanent injunction,-in the alternative, for recovery of possession with mesne profits,-in respect of the disputed jalkar with an additional prayer

for a further declaration that a registered Kabuliyat. executed by the petitioner defendant No. 1, on November 8, 1954, in favour of the plaintiffs

opposite parties in respect of the same, is invalid and inoperative and not binding on the said plaintiffs and has conferred no title on the said

defendant. The suit was brought upon, inter alia, the following allegations:

(i) that, by a Kabuliyat of the year 1358 B.S., the defendant petitioner took from plaintiffs settlement of the above jalkar at an annual rental of Rs.

17,375/- which settlement was to expire with the expiry of Pous 1360 B.S. when the said defendant was to vacate possession in favour of the

plaintiffs;

(ii) that, in terms of the above stipulation and in pursuance of a notice, given by the plaintiffs in accordance therewith, the defendant petitioner

actually gave up possession of the disputed Jalkar with the expiry of Pous 1360 B.S. and the plaintiffs duly entered into possession of the same;

and (iii) that, the defendant, however, did, thereafter, set up a false and fraudulant Kabuliyat dated November 8, 1954, to assert title to the

disputed jalkar and, on the strength of the same, was attempting to dispossess the plaintiffs.

2. The material defence was as follows:

(i) that the Kabuliyat of 1954 was legal, valid and binding on the plaintiffs;

(ii) that the petitioner defendant''s tenancy under the earlier Kabuliyat of 1358 B.S., if not under the first or the earliest Kaliyat of 1347 B.S., to

which year dates back his tenancy and possession of the disputed property, was continuing under the terms thereof or otherwise by holding over

etc. and it was liable to continue under the same and/or the West Bengal Non-Agricultural Tenancy Act, 1949;

and, (iii) that he was entitled to continue in possession of the disputed jalkar as tenant under the aforesaid Act.

3. The learned Subordinate Judge refused the petitioner''s prayer for stay under the above section (Section 46 of the West Bengal Estates

Acquisition Act) upon the view that the instant suit did not involve determination of status of any tenant or of the incidents of any tenancy but

merely concerned the validity or otherwise of the Kabuliyat of the year 1954, or, in other words, the existence or non-existence of the tenancy

thereunder. The propriety of this view is challenged in this Rule.

4. In our opinion, this Rule should succeed. In the context of the pleadings of the parties, as quoted hereinbefore, it is perfectly clear that issue No.

7 of the suit which has been framed by the learned Subordinate Judge in the following terms: ""Is the defendant No. 1 tenant under the plaintiffs in

respect of the properties in suit and is he in possession of the same as such?"", would require determination not only of the validity or otherwise of

the above Kabuliyat of 1954 or the existence or non-existence of the tenancy thereunder but also the continuance or otherwise of the tenancy,

created under the earlier Kabuliyat or Kabuliyats of 1358 B.S. and 1347 B.S. which may again, in their turn, well include consideration of the

incidents of that tenancy and/or the status of the defendant concerned as tenant thereunder under the West Bengal Non-Agricultural Tenancy Act,

1949, or otherwise. The above matters would, therefore, be in issue in the instant suit, which, admittedly, was pending, when the relevant order u/s

39(1) of the aforesaid Act was made in the instant case. There can be no question, then, that the instant suit would fall within Sec. 46 of the West

Bengal Estates Acquisition Act and it has to be stayed thereunder.

5. The above view is not opposed to any of the decisions of this Court, though some of them may require some explanation or clarification. We

proceed now to consider the said decisions.

6. The earliest appears to be the case of Lala Gangaram Vs. Krishna Gopal Jhunjhunwala and Others, , decided by S. R. Das Gupta and Mallik

JJ., on March 21, 1955. There, the suit was for recovery of khas possession of a colliery and the relevant point involved raised merely the question

of existence or non-existence of a tenancy, as distinguished from its incidents or the status of any tenant. It was, therefore, rightly held that the

above Section did not apply to the case, although some of the observations in the judgment may well be said to be too wide. It is to be noted also

that, at the time of the aforesaid decision, this particular section (Section 46) was in operation in its unamended form, under which the relevant

question of stay had to be judged solely with reference to the plaint and not with reference to issues also, so as to attract the written statement too,

although it may be said that, at certain places in their judgment in the above case, the learned Judges proceeded on the wider view of the Section,

as now amended.

7. The next two cases, reported in Sripati Charan Panja and Ors Vs. Narendra Nath Roy Choudhury and Ors, (per Bachawat, J.) and Beni

Madhab Ghose and another v. Sm. Anila Bala Ghose (3) 61 C.W.N. 349 (per Renupada Mukherjee, J.), do not seem to have been correctly

decided. They appear to have taken an unduly restricted view of the section,-that is, even of the old and unamended section 46 which was

applicable to those cases. This has already been noted and pointed out in the later Bench decision of this Court (4) ( Dhirendra Nath Boss and

Others Vs. Sushil Kumar Safui and Others, , to which we shall presently refer and with those observations we respectfully agree.

8. In the above case, reported in (4) Dhirendra Nath Boss and Others Vs. Sushil Kumar Safui and Others, , on the construction of the plaint, as

made by their Lordships at p. 527 of the Report, and upon the construction of the statute (Section 46) as made by their Lordships at pp. 525-526

of the Report, the actual decision is open to no objection. It may be said, however, that the plaint in that case having regard to its terms, set out at

p. 523 the Report was somewhat widely construed and it might well have been held to be a case, which involved only the question of existence or

non-existence of a tenancy or the status of any tenant and thus to be outside the Section. As to the statute in question, namely, Section 46 in its old

and unamended form, their Lordships, no doubt, adopted a liberal, as opposed to a strict, construction but there was ample justification for it,

having regard to the nature and object of the same, as elaborately discussed by their Lordships, the statutory language, permitting such construction

and obviously pointing to the same in the aforesaid context. It is to be noted also that the above case was actually decided by this Court (on

August 29, 1958) after the amendment of the section (on January 8, 1958) which, on its language appears to be retrospective and which language

would, obviously, embrance the wide construction, put upon the statute by their Lordships. In the above view, upon the construction of the plaint,

made by their Lordships, the case must be held to have been rightly decided. The same remarks apply to the unreported decision in the case of

Kishori Mondal v. Sk. Bhutu Gayen (5) (Civil Revision Case No. 3449 of 1955, decided by Das Gupta and Guha, JJ., on June 4, 1956) which,

however, was a case prior to the aforesaid amendment, in every sense of the term.

9. The case of Sudhir Chandra Bera Vs. Chota Gobinda Shau, , does not seem to have been correctly decided. In this case, which was a post-

amendment one, Guha Ray, J, apparently over-looked the implication,-if not the express terms,-of the amended section, when, actually applying

the same to the facts before him. The view of the learned Judge as to the scope of the amended section appears to be too narrow and is

contradicted by its very language.

10. In Panchanan Pramanik & Ors. v. Kishori Mohan Banerjee and others (7) 64 C.W.N. 83, to which I was a party, the sole question was to the

existence or non-existence of the tenancy and it did not, in the facts of that case, involve determination of the incidents of any tenancy, or of the

status of any tenant. The observation at page 84 of the report must be read in that context. It is also clear from this case, as it is from the statute

itself too, that the section (Section 46) would apply even if the determination of the incidents of the tenancy or of the status of the tenant be only

one of the issue in the suit.

11. As to the more recent decision, reported in Kalipada Mandal and Others Vs. The State of West Bengal and Others, , it need only be said that

it is not strictly relevant on the point, now before us, although there are some incidental general observations there on the scope of the present

amended section.

12. We do not think also that, strictly speaking, our above view would be opposed to the two decisions of this Court, reported in Rajaram Singh

and others v. Sheo Prasad Roy and others (9) 3 C.L.J. 63 (notes portion) and Kshemananda Kumar v. Rashamaya Haldar (10) 32 C.W.N. 132,

under the so called analogous provision (Section 111) of the Bengal Tenancy Act. Apart from anything else, it is perfectly clear that the said

section had a materially different wording from the present section 46 of the West Bengal Estates Acquisition Act, 1953, and it resembled, if at all,

only the old or unamended section (Section 46 of the West Bengal Estates Acquisition Act, 1953) and that, again, only to a limited extent. Its

scope, therefore, was obviously much narrower, and, in that context, the decisions, given in the above two cases, are clearly distinguishable.

13. Under the Section, with which we are here concerned, namely, Section 46 of the West Bengal Estates Acquisition Act, 1953, as it stands

now, the test is to find out whether, in the proceeding in question before the Civil Court, the matters in issue involve or comprise the question of

determination of rent or the incidents of any tenancy or the status of any tenant-mark, in particular, the use of the indefinite and indifferent adjective

''any'' - and, once that test is satisfied, the suit or proceeding concerned must be stayed. If this is borne in mind, no difficulty will arise in the

application of the section and the decisions also would not present any real difficulty. Applying the test, as indicated above, we have no hesitation

in holding that the instant suit should be stayed under the aforesaid section.

14. In the above view, we make this Rule absolute, set aside the order, complained against herein, and direct stay of the instant suit under the

aforesaid Section (Section 46 of the West Bengal Estates Acquisition Act, 1953). There will be no order as to costs in this Rule.

Amaresh Roy, J.

I agree.