

(1954) 03 CAL CK 0027

Calcutta High Court

Case No: Appeal from Appellate Order No. 56 of 1951

Anantalal Ruj

APPELLANT

Vs

Jotindra Chandra Mondal and
Others

RESPONDENT

Date of Decision: March 10, 1954

Acts Referred:

- Bengal Agricultural Debtors Act, 1936 - Section 37A, 37A(1), 37A(5), 37A(8)
- Civil Procedure Code, 1908 (CPC) - Section 115, 144, 151, 47

Citation: 58 CWN 800

Hon'ble Judges: Guha Ray, J; Das, J

Bench: Division Bench

Advocate: Sarat Chandra Jana and Muktipada Chatterji, for the Appellant; Jyotirindra Nath Das, for the Respondent

Judgement

Das, J.

This appeal is at the instance of Ananta Lal Ruj, opposite party to an application filed by the respondent Jogendra Chandra Mondal u/s 37A of the Bengal Agricultural Debtors Act for setting aside" the sale held on the 10th of July, 1936, in Title Execution Case No. 172 of 1936 of the Court of the Munsif at Dubrajpur. The application was allowed on contest against opposite party No. 4 Ananta Lal Ruj, the appellant in this Court, and ex parte against the rest. The sale held on the 10th of July, 1936, was set aside and the petitioner Jogendra Chandra Mondal was directed to be restored to possession from the 1st of Baisakh, 1358. Against that decision, opposite party No. 4 Ananta Lal Ruj preferred an appeal. The appeal was heard by Mr. Wooshacur Basil Majumdar. Additional Subordinate Judge, Birbhum. By his order dated the 21st April, 1951, the learned Judge dismissed the appeal on the preliminary ground that no appeal lay to that Court. Against the said decision this second appeal has been filed by Anantalal Ruj. The only question in issue is whether an appeal lies against an order setting aside a sale and directing restoration of

possession u/s 37A(8) of the Bengal Agricultural Debtors Act.

2. Section 37A(1) of the Bengal Agricultural Debtors Act inter alia provides that where any immovable property of any person has been sold after the 12th of August, 1935, in execution of a decree of a Civil Court or a certificate under the Public Demands Recovery Act, 1913, such person or his heir, executor or administrator may apply for relief u/s 37A (1) if certain conditions are fulfilled. The application has to be made to a Board in the local area within which the applicant resides. After making certain enquiries the Board is required to make an award directing payments in the manner indicated in section 37A(5). Section 37A(8) then makes a provision for setting aside the sale in respect of which relief was sought by an application u/s 37A(1) and for restoration of possession. Section, 37A(8) enables the debtor to present a copy of the award made under subsection (5) "to the Civil Court or Certificate Officer at whose order the property was sold and such Court or Certificate Officer shall thereupon direct that the sale be set aside, that the debtor together with any person who was in possession of the property sold or any party thereof at the time of delivery of possession of such property to the decree-holder as an under-raiyat of the debtor and who has been ejected therefrom by reason of such sale be restored to possession of the property with effect from first day of Baisakh next following or the first day of Kartic next following, whichever is earlier. Section 37A does not however provide specifically for an appeal against the order setting aside the sale and directing restoration of possession u/s 37A(8) of the Bengal Agricultural Debtors Act. The question is whether in the absence of an expression in the Act such an order is appealable or not. As I have already stated, the application for setting aside the sale and restoration of possession has to be made to the Civil Court or the Certificate Officer at whose order the property was sold, in other words, the proceedings envisaged in section 37A(8) have to be taken in the very court or before the very officer who directed the property to be sold. It is therefore a further step which the law permits to be taken in the course of those proceedings in which the property was sold. It is a continuation of those proceedings. In the present case, we are concerned with a sale by a Civil Court, not a sale by a Certificate Officer. So far as the present case is concerned, the proceedings reached the Civil Court after presentation of a copy of the award made to that Court. The effect of these proceedings is that the sale which was held and possession which was delivered in pursuance of an order of the Civil Court are set aside and possession restored to the persons named in section 37A of the Act and who had been dispossessed by virtue of the order of the Civil Court. Having regard to the nature of the proceedings, it is apparent that the proceedings are akin to proceedings by way of restitution. The fact that no appeal is provided for in the Act itself is not very material. The principles which underlie questions of the present description were enunciated by the Judicial Committee in the case of *Secretary of State for India in Council v. Chelikani Rama Rao* (1) (L.R. 43 IndAp 192). In that case under the Madras Forest Act the Forest Settlement Officer was charged with the

duty of examining claims to lands within a certain area which the Government proposed to constitute into a reserved forest. The respondent in that case claimed to be the owner of certain parcels of land within the notified area. The Forest Officer negatived his claim. In accordance with the provisions of the Madras Forest Act the claimant preferred an appeal to the District Court against the order of adjudication. The District Judge affirmed the decision of the Forest Officer. Against that order an appeal was taken. It was contended in that case that further proceedings were incompetent because no further appeal had been provided for in the Act itself. In disposing of this contention the Board observed that "when proceedings of the character referred to in the Special Act, namely, the Madras Forest Act, reach the District Court, that Court is appealed to as one of the ordinary Courts of the Country, with regard to whose procedure, orders and decrees the ordinary rules of the CPC apply." The principle has been consistently followed in later cases, the latest pronouncement being in the case of *Adaikappa Chettiar v. R. Chandrasekhara Thevar alias Sundara Pandia Thever* (2) (52 C.W.N. 275). That case related to certain proceedings under the Madras Agriculturist Relief Act (Act IV of 1938). The relevant facts are that after a final decree had been passed in a mortgage suit, the decree-holder took out execution and certain properties of the judgment-debtor were advertised for sale. Before the sale took place, the judgment-debtor made an application purporting to be under sections 20, 19 and 8 of the Madras Agriculturist Relief Act and sections 47 and 151 of the Code of Civil Procedure. The relief prayed for was that the execution proceedings and the auction sale be stayed until the disposal of the application filed by the judgment-debtor for determining the extent of his liability and a declaration that the debt had been completely discharged. The application was dismissed on the 25th July, 1938, by the Subordinate Judge on the preliminary ground that the judgment-debtor was not an agriculturist and could not claim relief under the said Act. From that order an appeal was taken to the High Court of Madras and the latter Court directed the learned Subordinate Judge to submit a further finding on the question whether the judgment-debtor was an agriculturist or not and if so, to what relief was he entitled ? The learned Subordinate Judge after remand delivered a judgment on the 9th of February, 1939, and came to a finding that the judgment-debtor was not an agriculturist and was not entitled to any relief. Meanwhile, on the 3rd of August, 1938, the judgment-debtor made another application being IA. 361 of 1938 in O.S. No. 5 of 1921 praying for a relief that the preliminary and final decrees in the Mortgage Suit be amended in accordance with the provisions of the Act and that the debt be declared to have been discharged. Against the order, dated the 9th February, 1939, dismissing the application made in I.A. 361 of 1938 an appeal was taken to the Madras High Court. An appeal was also pending In the High Court at the time against the earlier order of the Subordinate Judge, dated 25th July, 1938. These appeals were taken up together. The appeal against the order, dated 9th of February, 1939, in LA. 361 of 1938 was held incompetent by the Madras High Court. The Madras High Court by its decision, dated 27th July, 1942, however directed that

the appeal against the order of the 9th of February, 1939, which had been made u/s 19 of the Act might be converted into an application u/s 115 of the CPC and in exercise of the revisional powers the Madras High Court set aside the order, dated the 9th of February, 1939. An appeal was taken to the Judicial Committee of the Privy Council and the question then arose whether the Madras High Court was right in the view it took as to whether an appeal was competent or not. In expressing their dissent from the view of the Madras High Court the Judicial Committee stated the true rule to be that where a legal right is in dispute and the ordinary courts of the country are seized of such dispute, the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal.

3. In the present case, the application u/s 37A(8) was pending adjudication before a Civil Court. The legal right of the judgment-debtor to have the sale set aside and to get restoration of possession was in dispute. The proceedings before the Civil Court were in the nature of restitution proceedings. If an adjudication is made in the course of such proceedings on the principles just now referred to, an appeal would lie, if such an appeal lies under the rules embodied in the body of the CPC although the Special Act does not provide for an appeal.

4. It is undisputed that proceeding by way of restitution are appealable, whether an order for restitution is made expressly in terms of section 144 or in exercise of the powers akin to those referred to in section 144 of the CPC (vide *Gnanada Sundari Mojumdar v. Chandra Kumar De* (3) (31 C.W.N. 290) and *Maharaja Sasikanta Acharjee v. Jalil Baksha Munshi* (4) (35 C.W.N. 105).

5. The position therefore is that the order with which we are now concerned is an appealable order and an appeal lay to the Court of the District Judge and a further appeal lies to this Court. The view which I have taken above is in consonance with the view taken by Chakravartti, J., as he then was in Civil Revision No. 888 of 1948, dated the 19th January, 1940.

6. Mr. Das referred us to a decision of Roxburgh, J., in the case of *Jitendra Nath Bera v. Sitapati Purkait* (5) [(1950) 5 D.L.R, Cal. 115]. That case however is clearly distinguishable because in that case the sale which was sought to be set aside by an application u/s 37A(8) of the Bengal Agricultural Debtors Act was a sale held by a Certificate Officer and not by a Civil Court. Although there are certain general observations in that judgment, the ratio decidendi of that judgment was stated by the learned Judge in the following words: "Where the award is in respect of a sale held by a Certificate Officer, the application will be made to the Certificate Officer for setting aside the sale. Certainly it cannot be suggested that the Certificate Officer can exercise any functions u/s 47, Civil Procedure Code."

7. That case therefore is clearly distinguishable. The result therefore is that the order complained of is set aside and the case remitted to the Court of the District Judge for a hearing of the appeal on the merits. [Certain other directions were given which are not material for the purpose of the report -Ed.]

Guha Ray, J.

I agree.