

(1983) 04 CAL CK 0026

Calcutta High Court

Case No: C.R. No. 3937 of 1980, C.R. No. 3346 of 1980 and C.R. No. 2654 of 1980

Mohd. Jebbas Ali

APPELLANT

Vs

Rahima Bibi

Mainuddin Mondal Vs

Samser Seikh and

Others
 Tarapada

RESPONDENT

Shome Vs Parbati

Charan Sarkar and

Others

Date of Decision: April 29, 1983

Acts Referred:

- Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 - Section 13, 19, 3, 8
- Civil Procedure Code, 1908 (CPC) - Section 141, 21, 21A
- WEST BENGAL LAND REFORMS ACT, 1955 - Section 2, 24, 57, 6, 8

Citation: 87 CWN 797

Hon'ble Judges: Chittatosh Mukherjee, J; Amitabha Dutta, J

Bench: Division Bench

Advocate: Tapendra Nath Basu, Arup Kumar Nag, Amalesh Kumar Banerjee, Saktinath Mukherjee, Pradipta Ray, for the Appellant; Madan Mohan Mailick for opposite party in C.R. 3346/80, Tapendra Nath Basu, Arup Kumar Nag for opposite party in C.R. 3937/80, R.K. Banerjee, D.P. Mukherjee for opposite party in C.R. 2654/80, for the Respondent

Judgement

Chittatosh Mukherjee, J.

When a portion or share of a holding of a raiyat is transferred to a stranger, any co-sharer raiyat of the sold holding or a raiyat possessing an adjacent holding may, within the prescribed time, under S. 8(1) of the West Bengal Land Reforms Act, 1955 apply to the Munsif having territorial jurisdiction for transfer of the said portion or share of the holding to him on deposit of the consideration money together with

further sum of ten per cent of the total amount.

2. Any person aggrieved by an order of the Munsif under S. 9 of the West Bengal Land Reforms Act may appeal to the District Judge having jurisdiction over the area within which the land is situated.

3. The principal point in these three Revisional Application is:

4. While entertaining an application under Section 8 of the West Bengal Land Reforms Act, 1955 or an appeal under S. 9(6) of the said Act, have the Munsif and the District Judge respectively jurisdiction to allow amendment of the application under S. 8(1) of the Act by way of insertion of a prayer for pre-emption under S. 24 of the West Bengal Non-Agricultural Tenancy Act, 1949" In other words, the point for decision is whether an application under S. 8(1) of the West Bengal Land Reforms Act can be lawfully allowed to be amended by converting the same into an application under S. 24 of the West Bengal Non-Agricultural Act, 1949.

5. Mr. Ranjit Kumar Banerjee learned Advocate for the transferee opposite parties, did not ultimately dispute the proposition that the Munsif, while exercising jurisdiction under S. 8 of the West Bengal Land Reforms Act, 1955 and the learned District Judge, while hearing an appeal under S. 9(6) of the said Act, function as courts and they are not "Personal designate". The West Bengal Land Reforms Act, 1955 has not selected the Munsif and the learned District Judge to act in their private capacities and as individuals. The Munsif and the District Judge as judicial officers, i.e members of an ascertained class, entertain and dispose of the pre-emption proceedings under the West Bengal Land Reforms Act (See judgment of Hidayatullah, J. in the case of Central Talkies Ltd. V. Dwarka Prasad AIR 1966 SC 606 (609) para 9), The Ss. 8n and 9 of the West Bengal Land Reforms Act, 1955 have provided for adjudication of pre-emption proceedings by constituted courts, I e. existing courts and not by courts created by the special law (West Bengal Land Reforms Act). The court of the District Judge and the court of the Munsif are among the four classes of civil courts specified in Section 3 of the Bengal, Agra, Assam Civil Courts" Act 1887. The State Government by Notification made under S. 13(1) of the Bengal, Agra, Assam Civil Courts Act, 1887 fixes and alters local limits of jurisdiction of Civil Courts.

6. The jurisdiction of the Munsif and that of the District Judge under Ss 8(1) and S. 9(6) of the West Bengal Land Reforms Act have not been fixed by the State Government's Notification under S. 13(1) of the Bengal, Agra, Assam Civil Courts Act, 1887 and the West Bengal Land Reforms Act has conferred such special jurisdiction upon them. Therefore, while dealing with pre-emption proceeding under the West Bengal Land Reforms Act, the Munsif and the District Judge function as courts of Special Jurisdiction. This proposition slightly differently stated is follows:

7. Section 8(1) and S. 9(6) of the West Bengal Land Reforms Act, 1955 have conferred additional jurisdiction upon the Munsif and the District Judge who are existing Civil

Courts (See *Bazler Rahman Khandakar v. Amiruddin* 48 CWN 699 and [Rai Harendranath Chaudhuri Vs. Sm. Daulatmani Chaudhurani,](#)).

8. In view of the special provisions contained in S. 8(1) of the West Bengal Land Reforms Act the Munsif having territorial jurisdiction is competent to entertain a pre-emption application under S. 8(1) of the Act even when the amount of consideration for a transfer exceeds the extent of pecuniary limits fixed under S. 19 of the Bengal, Agra and Assam Civil Courts, Act, 1887.

9. A fundamental distinction has been always drawn between the courts jurisdiction of the subject matter on one hand and its territorial and pecuniary jurisdiction on the other. While an objection to the lack of the inherent jurisdiction of a court to try a cause cannot be waived and the said objection can be raised at any stage, objection as to place of suing and courts' competence with reference to pecuniary limits must be raised at the earliest and if not done, no such objection can be allowed (See Ss. 21 and 21A of the Civil Procedure Code, 1908). Therefore, absence of pecuniary limits to the Munsif's jurisdiction under S. 8(1) of the Act is not at all material.

10. Neither the West Bengal Land Reforms Act, 1955 nor the West Bengal Land Reforms Rules 1965 have prescribed exhaustively a separate Procedure for disposal of applications under S. 8 (1) of the said Act and of appeals under S. 9(6) of the said Act. Sub-section (1) of S. 9 of the said Act, inter alia, requires the Munsif to give notice of such an application to transferor and as to cause notice to be affixed on the and. The transferor and/or the person interested have been given right to appear and contest. The Rule 7 of the West Bengal Land Reforms Rules Prescribes the form of notice. Rule 8 of the West Bengal Land Reforms Rules which applies to appeal under S. 9(6) of the Act is also not exhaustive. Section 57 of the West Bengal Land Reforms Act, 1955 has prescribed that any officer dealing with proceedings under the Act shall exercise the powers of Civil Court under Civil Procedure Code, 1908 for the purpose of the matters specified in clauses (a) to (g) of the said section.

11. Order VI of the Code has not been expressly made applicable to preemption proceedings under the West Bengal Land Reforms Act, 1955. But the Munsif having jurisdiction and the District Judge hearing the appeal have inherent powers to allow amendment of pleadings on such terms as they might think just which may be necessary for the purpose of determining the real question in controversy between the parties. Such a powers to allow amendment of pleadings on such terms as they might think just which may be necessary for the purpose of determining the real question in controversy between the parties. Such a power to allow amendment may be also considered as a part of the implied and incidental powers of the court to dispose of in accordance with lawn a preemption application.

12. Sir Asutosh Mookerjee, J. in *Bechu Singh and others v. Bicharam Sahu* 10 CLJ 91 at page 100, had observed, Inter alia "The Court, where the circumstances required

it, has an inherent power to do that justice for the administration of which it alone exists. where the legislature has provided no procedure to be followed in cases which must and do arise, the courts must be taken to have inherent jurisdiction to decide the question of procedure and, if necessary, to invent a procedure for themselves". Recently, M. M. Dutta and M. K. Mukherjee, JJ. In the case of Ajit Sanyal & anr. v. Rasiruddin Mondol & anr. 86 CWN 708, at page 713 have applied the said principles laid down in Bechu Singh's case (supra) and held that in view of the Amendment of S. 141 of the CPC the procedure provided for suits is no longer applicable to writ proceedings but there is no bar in adopting such procedure if thought necessary in the discretion of the court and in accordance with the principles of justice, equity and good conscience. We respectfully agree with the above principles and good conscience. We respectfully agree with the above principles of law.

13. In pre-emption proceedings legal rights are in dispute and the Munsif and the District Judge are bound to act in a manner not different from their civil jurisdiction. The West Bengal Land Reforms Act and Rules made there under have not indicated any contrary intention. The Privy Council in the case of (1947) L.R. 74 I.A. 264 (Privy Council) , had observed:

The true rule is 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..notwithstanding that the legal right claimed arise under a special statute

14. The Supreme Court in their decision in [National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. \(J. and P. Coats Ltd., Assignee\)](#), had made similar observations with reference to the High Court's appellate jurisdiction under the Trade Marks Act.

15. In case an application under S. 8(1) of the West Bengal Land Reforms Act, 1955 is permitted to be amended by inseting the prayer for pre-emption under S. 24 of the West Bengal Non-Agricultural Tenancy Act, 1949, the Courts jurisdiction under Ss. 8 and 9 of the Act would be no longer there, Therefore, we may next consider whether the court can allow an amendment of the pleading which takes the case out of its jurisdiction under Ss. 8 and 9 of the west Bengal Land Reforms Act 1955. We have already concluded that both the learned Munsif having territorial jurisdiction and the learned District Judge acting as the appellate court under S. 9(6) of the West Bengal Land Reforms Act, 1955 have discretionary jurisdiction to allow either party to alter or amend his pleading. The same principles which apply to amendment of pleadings in a suit ought to regulate the exercise of the power of amendment by the learned Munsif and the District Judge respectively under Ss. 8(1) and 9(6) of the West Bengal Land Reforms Act, 1955. Therefore, we proceed to consider some of the reported decisions regarding court's power to allow amendment of pleading affecting its jurisdiction and the procedure to be followed.

16. It has been generally held that the court, which has no jurisdiction to entertain a suit, is not competent to allow an amendment of the plaint which would bring the suit within its jurisdiction. When on the face of it the plaint shows that the court has no jurisdiction to try it, such court cannot allow amendment of the plaint (See, [P.I. Govindaraju Naicker Vs. P. Kassim Sahib and Others](#), , [Mst. Zohra Khatoon Vs. Janab Mohammad Jane Alam and Others](#), , [Ratan Chand Khanna Vs. Mahendra Kumar](#),).

17. But in case the court has jurisdiction to entertain a suit, the courts in India are not unanimous in their views as regards the power of such court to allow an amendment of the plaint which would take the suit out of its jurisdiction and about the procedure to be followed. There are broadly following three lines of judicial views:

(1) When an application for amendment of the plaint is made which if granted will deprive the court's jurisdiction to decide on merits, the court ought to dismiss the application. No court will permit a plaint to be so amended as to oust its own jurisdiction to try the suit (vide the decision of Venkatasubba Rao, J. in [C. Singara Mudaliar Vs. M. Govindasami Chetti and Others](#),).

(2) When the court is faced with the question of allowing an amendment which taken together with the original claim exceeds its jurisdiction, it should return the plaint together with the application of amendment of consideration by the court having jurisdiction to entertain the claim which is proposed to be made by amendment of the plaint (See Lalji Ranchhodas v. Naraottam Ranchhodas AIR 1953 Nag 273, [Edupuganti Raghavendra Rao Memorial High School Committee and Others Vs. Potluri Atchayya and Others](#),).

(3) When the claim as originally made is within the court's jurisdiction but if the said claim is amended, the court might have no further jurisdiction, the said court itself is competent to allow such amendment. Thereafter, it would decide whether the amended plaint should be returned for presentation to the proper court (See Vhavani v. Mangamma AIR 1949 Mad. 208, Goverdhan Beng and Joint family of Kaniram Laxminarayan v. Govt. of the Union of India AIR 1953 Hyd 212 (Para 16), [Kundan Mal and Others Vs. Thikana Siryari and Others](#), , [T.K. Sreedharan Vs. P.S. Job](#),).

18. The aforesaid view expressed by Venkatasubba Rao J. in S. I. Govindraja Naicker v. Kassim Saheb (supra), is an extreme one and the subsequent judicial authorities have not endorsed the said view. The observations of Hidayatullah and Kauselendra Rao, JJ. In Lalji Ranchhodas v. Narottam Ranchhodas (supra), were made with reference to the amendment of the plaint affecting the court's pecuniary jurisdiction. Therefore, when an application is made for raising the value of a suit, it would present no difficulty if the court in which the suit had been originally instituted returns the plaint and the amendment application for consideration by a court having jurisdiction to entertain the higher amount of claim proposed to be

made in the plaint. Because the said court has jurisdiction to entertain the claim as originally valued and also the higher claim proposed to be introduced by amendment. It might not be possible to follow this procedure when by reason of the proposed amendments; court's jurisdiction under a particular law is to be changed. IN such an event if both the original plaint and also the amendment application are returned for presentation to the court which may have jurisdiction only in respect of the claim proposed to be amended but not in respect of the original claim, then the latter court may not be in a position to allow such amendment in order to bring the case within its jurisdiction. In such an event the ratio of the decisions in the case of *Vhavani v. Mangamma* (supra). *Goverdhan Bang v. Government of India*; *Kundan Mal & ors. v. Thikaha* (supra), *T. K. Sreedharan v. P. S. Job* (supra) etc. noted above may be applied. In our opinion, the third view set out hereinbefore ought to be followed. Order 6 Rule 17 of the Code has not expressly deprived the court of its power to allow amendments which might affect its jurisdiction to try the suit. It is settled law that the court has a large measure of discretion in the matter of allowing amendments and Court's such power is liberally exercised. On the question of amendment of pleadings we ought to adopt a procedure which would ensure proper administration of justice and at the same time shorten rather than delay fair disposal of the case. In case, upon the pleadings originally made, the court has competence to try the cause, the said court ought to consider the application for amendment of the plaint even when proposed amendment might affect court's jurisdiction to further try the suit.

19. We also agree with the observations made in the cases of *Goverdhan Beng. v. Govt. of Union of India* (supra), *Kundan Mal & ors. v. Thikana Siryari & ors.* (supra) and *T. K. Shreedharan v. P. S. J al* (supra), that when the court considers an application for amendment of the pleadings it does not enter into the merits, at the stage. The Court only decides whether or not the proposed amendment ought to be allowance on such terms as may be just in order to decide the real questions in controversy between the parties. In case, after amendment of the plaint is granted, the defendant raises an objection about the court's competence to try the suit or the proceeding, the court may decide the said jurisdictional question as a preliminary one. In case the court finds that it has no jurisdiction to entertain the amendment case, it might direct return of the plaint for presentation to the competent court of law. At the stage of deciding whether an amendment of the plaint ought to be allowed, the could would not be justified in recording any finding on the merits or about the consequences of the proposed amendment. After such amendment is allowed, the court has ample jurisdiction to direct return of the plaint under Order 7 Rule 10 of the CPC or according to the principles embodied in the said Rule.

20. We have already observed that Ss. 8 and 9 of the West Bengal Land Reforms Act have conferred additional jurisdiction upon existing courts constituted under the Bengal Agra and Assam Civil Courts Act. In other words, these established civil

courts have been vested with jurisdiction under Ss. 8 and 9 of the West Bengal Land Reforms Act. The Munsif and the District Judge in deciding the said proceedings under Ss. 8 and 9 of the West Bengal Land Reforms Act are governed by ordinary rules of procedure applicable to suits and appeals. We are not unmindful of the legal position that applications under S. 24 of the West Bengal Non-agricultural Tenancy Act are filed before the court having pecuniary jurisdiction i.e. according to the value of the subject-matter whereas irrespective of the amount of consideration for transfer the munsif having territorial jurisdiction entertains an application under S. 8 of the West Bengal Land Reforms Act.

21. The above position in law does not really present any serious difficulty. In the event the value of the of the subject-matter of the application is within the learned Munsif's pecuniary jurisdiction filed under S. 19 of the Bengal Agra and Assam Civil Courts Act, then even after he allows application under S. 24 of the West Bengal Non-agricultural Tenancy Act, the learned Munsif need not return the amended petition but would proceed to try the said application in accordance with law. But in case the learned Munsif allows such an amendment or a preemption application in respect of a transfer of a share of a raiyat's holding valued at a figure exceeding has pecuniary jurisdiction fixed under S. 19 of the Bengal Agra and Assam Civil Courts Act, the learned Munsif would return the said amended application under S 24 of the West Bengal Non-Agricultural Tenancy Act for presentation to proper court.

22. Anil Kumar Sen and B. C. Chakrabarti, JJ. In their unreported decision dated February 18, 1982 in C. R. Case No. 3667 of 1979 Amulya Kumar Chakraborty & Ors. V. Sm. Prasanta Kumari Pal have held that the amendment of an application under S. 8 of the west Bengal Land Reforms Act for converting the same into an application under S. 24 of the West Bengal Non-agricultural Tenancy Act ought to be allowed. The learned Judges observed that the application considered by them was in substance for enforcement of the right to pre-empt a transfer made by their co-sharer. Such pre-emption right was conferred upon them by S. 8 of the West Bengal Land Reforms Act and S. 25 of the west Bengal Non-Agriculture Tenancy Act depending on whether the land transferred was agricultural or non-agricultural. Therefore, an alternative prayer for pre-emption under S. 24 of the said Act did not mean a new pleading and the question of limitation did not arise. On the facts of said case the learned Munsif's court was a common forum for entertaining of pre-emption objections under the two Acts. We respectfully agree with the above reasons given by the Division Bench consisting of Anil Kumar Sen and B. C. Chakraborti, JJ and conclude that the learned Munsif exercising jurisdiction under S. *(1) of the West Bengal Land Reforms Act, 1955 and the learned District Judge exercising jurisdiction under S. 6 of the said Act have jurisdiction to allow amendments of applications under S. 8(1) of the said Act affecting jurisdiction of the said courts under the West Bengal land Reforms Act.

23. We now proceed to separately consider the three Rules. In Civil Rule No. 2654 of 1980 the learned Munsif had allowed the application under S. 8 of the West Bengal Land Reforms Act. The learned Munsif had rejected the contention of the opposite parties that the application was barred by limitation. According to the opposite parties plot no. 609 have been record as a Danga land and the plot no. 610 have been recorded as tank. The learned Munsif over-ruled both the points. The learned Subordinate Judge, 1st court, Hooghly allowed the appeal preferred by the pre-emptees set aside the order of the learned Munsif and dismissed the application under S. 8 of the West Bengal Land Reforms Act, 1955. According to the learned Subordinate Judge, the pre-emption application was not barred by limitation. According to the learned Subordinate Judge, plot no. (09, which was recoded as Danga Land has never been used for agricultural purposes and the same was not an agricultural land.

24. The learned Subordinate Judge further held that other plot no. 610 was recorded as a tank. The definition of the expression "land" under S. 2(7) of the West Bengal Land Reforms Act had been retrospectively amended from February 12, 1971 by the West Bengal Land Reforms (Amendment) Act (Act XII of 1972). According to the said amended definition tank was not included in the expression " Land". The learned Subordinate Judge held that both the plots could not be the subject matter of application under S. 8 of the West Bengal land Reforms Act. The learned Subordinate Judge rejected an application filed by the pre-emptor respondents of their pre-emption application by inserting a prayer for relief under S. 24 of the west Bengal Non-agricultural Tenancy Act.

25. The learned Subordinate Judge was not quite in holding that the lands recorded as Danga in the Record of Right are prima facie non-agricultural lands. The last finally published R. S. Records were prepared under the provisions of the West Bengal Estates Acquisition Act lays down that "agricultural and" means "lands ordinarily unused from the purpose of agriculture or horticulture and include such and notwithstanding that it may be lying fallow for the time being." But the learned Subordinate Judge has found as a fact that the land had never been used for agricultural purposes and believed the evidence of O. P. W. 2 that no agriculture was possible on the plot of land. Therefore, we are unable to reverse the learned Subordinate Judge's finding that plot No. 609 was not an agricultural land. Mr. Saktinath Mukherjee, learned advocate for the petitioner, had next submitted that the petitioner had acquired under S. 8(1) of the West Bengal Land Reforms Act a vested right to pre-empt the transfer of plot no. 610 which was recorded as a tank and was an agricultural and under the law prevailing on the date of transfer. According to Mr. Mukherjee, the subsequent amendment of the definition of the expression "agricultural and" by the West Bengal Land Reforms (Amendment) Act, 1972, did not provide for retrospective deprivation of the petitioner's such pre-emption right in respect of plot no. 610. It is unnecessary for us to decide this point. The petitioner himself had applied before the learned Subordinate Judge for

amendment of his application under S. 8(1) of the West Bengal Land Reforms Act by inserting a prayer under S. 24 of the West Bengal Non-agricultural Tenancy Act.

26. For the reasons already stated, we are of the view that the learned Subordinate Judge failed to exercise his jurisdiction vested in him by law by rejecting the petitioner's said amendment application. Accordingly, we propose to set aside the order of the learned Subordinate Judge, and to remit the said amendment application to the learned Munsif for fresh disposal in accordance with law and in accordance with the direction and observations made in our judgment. As this Rule succeeds on the aforesaid point, it is unnecessary for us to consider whether the Subordinate Judge has any jurisdiction to hear the appeal under S. 9(6) of the West Bengal Land Reforms Act. In this connection our attention has been drawn to the decision of Anil Kumar Sen and B. C. Chakarborti JJ. In *Paresh Nath Mondal v. Bijan Behari Mondal and ors.* 86 CWN 491. The learned Judges have held that the expression "District Judge" in S. 9(6) of the West Bengal Land Reforms Act means the principal civil court of the district. Section 9(6) of the Act not only confers the right of appeal but also fixes the forum, namely the court of the District Judge which, according to the Division bench, in terms of the S. 8(2) of the Bengal, Agra and Assam Civil Courts Act may include on assignment the court of the Additional District Judge appointed for the district. According to the Division Bench decision in *Paresh Nath Mondal v. Bijan Behari Mondal and ors.* (supra), an appeal under S. 9(6) cannot be transferred for disposal by a Subordinate Judge. *P. N. Mookerjee and Nivogi, JJ.* In the case of [Ajit Kumar Bhunia Vs. Sm. Kanan Bala Deyi](#), held that where an application under S. 83 of the Hindu marriage Act is duly filed before the District Court, the District Judge can transfer under S. 8(2) of the Bengal, Agra and Assam Civil Courts Act, the application to an additional District Judge for disposal. For the foregoing reasons, we made the Rules absolute, set aside the orders for the learned Munsif as well as the order of the learned Subordinate Judge and remit the case back to the learned munsif's court with a direction to dispose of the amendment application hereinbefore mentioned and thereafter to proceed in accordance with law.

27. A learned Single Judge of this Court had originally issued Civil Rule No. 3346 of 1980 on 26th May 1982. The Rule was referred to the Division Bench. The learned Munsif by his order complained of in this Rule allowed an application for amendment of a petition under S. 8 of the West Bengal Land Reforms Act. In our view, the learned Munsif had acted within his jurisdiction and in accordance with law by allowing the said amendment. We, therefore, uphold the order passed in Civil Rule No. 3346 of 1980 and remit the case back for disposal in accordance with law.

28. Civil Rule No. 3937 of 1980 was also issued by a learned Single Judge but subsequently was referred to the Division Bench. The learned Munsif has rejected an application under S. 8 of the West Bengal Land Reforms Act on the ground that the subject matter of the application was a Deba which had been excluded from the

definition of the expression "agricultural land" by the West Bengal Land Reforms. (Amendment) Act, 1972. In the instant case, the transfer in question was made in the year 1970. The pre-emptor preferred an appeal which ultimately came up for hearing before the Additional District Judge, 2nd Court, Birbhum. The learned Additional District Judge allowed the petitioner's application for amendment of the pleading by inserting a prayer for pre-exption under S. 24 of the west Bengal Non-agricultural Tenancy Act, if it was found that S. 8 of the West Bengal Land Reforms Act was not applicable. The respondents in the said miscellaneous appeal obtained the present Rule. For the foregoing reasons, we hold that the learned Additional District Judge did not commit any error of jurisdiction by allowing the said amendment application.

29. We, accordingly, discharge Civil Rule No. 3937 of 1980 and remit the case back to the lower appellate court with a direction to expeditiously dispose of the appeal in accordance with law.

Amitabha Dutta, J.

30. I agrees.