

Amritamaya Ghosh Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Nov. 24, 1975

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115, 2(2)
West Bengal Estates Acquisition Act, 1953 â€” Section 57B

Citation: 80 CWN 205 : (1975) 2 ILR (Cal) 649

Hon'ble Judges: R. Bhattacharya, J

Bench: Single Bench

Advocate: Rabindra Nath Mitra and Bikash Chandra Mondal, for the Appellant;

Final Decision: Dismissed

Judgement

R. Bhattacharya, J.

This is a revisional application u/s 115 of the CPC against an order passed by the learned Munsif at Bongaon in T.S.

No. 232 of 1973 declaring that the suit abated in view of Section 57B of the West Bengal Estates Acquisition Act. The Petitioner is the Plaintiff of

the suit.

2. In the suit filed by the Plaintiff the Defendant contested and a question arose whether the suit was maintainable in view of Section 57B of the

West Bengal Estates Acquisition Act which speaks about certain bar to jurisdiction of civil Courts in respect of certain matters mentioned in that

section. Several issues were framed in the suit and issue No. 3 was framed, as to the maintainability of the suit. The matter was heard and the issue

No. 3 was decided against the Plaintiff in terms of Section 57B of the West Bengal Estates Acquisition Act and the learned Munsif declared "the

suit abates". Against the said order the present revisional application has been filed.

3. I have heard Mr. Mitra, the learned Advocate appearing on behalf of the Petitioner, but nobody appears on behalf of the opposite party

Defendant.

4. The first question that arises for consideration is whether or not the revisional application lies against the order passed by the learned Munsif.

Mr. Mitra has contended that this is a simple order declaring abatement while deciding only one of so many issues in the suit. According to him,

against this order revisional application lies, because when there is no decree passed in this suit, there can be no question of preferring an appeal.

The contention of Mr. Mitra is that there can be no appeal as no formal decree has been drawn up. In this connexion my attention has been drawn

to the definition of "decree" given in Section 2, Sub-section (2) of the Code of Civil Procedure. That Sub-section (2) says that a decree is the

formal expression of an adjudication which conclusively determines the right of the parties with regard to all or any of the matters in controversy in

the suit. Mr. Mitra, as I have already stated, has argued that only one issue was decided while the remaining issues are yet to be decided. But from

the reading of the order it is quite clear that the entire suit has been determined by the learned Munsif. According to Section 57B of the West

Bengal Estates Acquisition Act under certain conditions the suit abates in respect of certain matters already mentioned in that section. I am not

going to quote the entire long section because I am not going into the merits of the case whether in view of the pleadings of the parties the suit in

fact abated or not. However, the learned Munsif on construction of Section 57B of the Act comes to the finding "the suit abates". The meaning of

the word "abate" as intransitive verb, according to the dictionary, is "to be abated" in legal matters and as transitive verb it means "to put an end

to" and "to nullify" and therefore, when the suit abates it means the suit comes to an end, that is to say, it is disposed of finally or nullified and in

effect the suit is dismissed. According to the finding of the learned Munsif the suit has abated. He has declared termination of the suit against the

Plaintiff. There is no doubt, therefore, that the suit has been finally determined.

5. In this connexion I may refer to a few decisions to show that the abatement of the entire suit is the final determination of the rights of the parties

and that it is a decree which is appealable. this Court in Naimuddin Biswas v. Maniraddin Lasker and Ors. 32 C.W.N. 299, expressed this view

and referred to the case of Bhikaji v. Purshotam ILR 10 Bom. 220 and also the decision in Subbayya v. Saminadayyar ILR Mad. 496. In the

Bombay case it is held that the order of abatement is virtually a decree disposing of the suit. According to the decision of the Madras case the

order of abatement determines the rights between the parties. There is another Bench decision of this Court in Sabitribai Debi Vs. Jugal Kishore

Das and Others, , wherein it has been held that the order of abatement of the entire first appeal would come within the definition of "decree" and as

such, would be appealable. In this view of the matter, there can be no question of filing any revisional application. The decision of the learned

Munsif could have been challenged by an appeal.

6. Mr. Mitra's submission is that no decree was drawn up. Decree is the formal expression of the decision of the Court as defined. After the final

decision, it is the duty of the Court to draw up a formal decree and unless that decree is drawn up the person aggrieved in the suit may have to wait

or he may request the Court to draw up formal decree. In the present case, in my view, there was the final adjudication or determination of the suit

and therefore, against that decision no revisional application lay. An appeal ought to have been filed.

7. In the result, the revisional application fails and the Rule stands discharged. In the absence of the opposite party the question of costs does not

arise.