

14.09.2021
Item No.38
Ct. No. 04
RP

SAT 207 of 2016
+
IA No.CAN 2 of 2021
CAN 3 of 2021

(Via Video Conference)
Kumar Paritosh Narayan (deceased)
Represented by Smt. Shova Narayan & Ors.
Vs.
Smt Juthika Dutta

Mr. Naba Kumar Das

Mr. Siladitya Mondal

.... for appellants

Mr. Das, learned advocate appears on behalf of appellants and submits, substantial questions of law are involved in the appeal and it be admitted.

His clients, defendants in the suit, had got their names recorded as in possession of suit property, being tank fishery. Their case was better argued in the first appeal, where several points were urged. Firstly, the suit was barred under section 57B in West Bengal Estate Acquisition Act, 1953 and section 61 in West Bengal Land Reforms Act, 1955. Without prejudice, predecessors-in-interest of plaintiff were inducted as tenants on 25th August, 1955, such

induction being after date of vesting. The correction was duly made to record his clients' name in respect of suit property. As such, the trial Court decreed the suit without jurisdiction and the lower appellate Court went further to sit in appeal over the order of the Administration, in recording names of his clients.

We have perused the judgments. The trial Court dealt with controversy put up before it by the parties. It found on facts that documentary and oral evidence revealed plaintiff to have title. In coming to such finding said Court noticed that the evidence also revealed, proceeding before the Administration, resulting in recording of names of defendants in respect of suit property, was without notice to plaintiff. The Court said, even then, the order passed by the Revenue Officer has no bearing in the present case nor it would help in deciding title of parties to the suit.

The lower appellate Court upheld judgment of the trial Court. In addition to dealing with issues framed at trial, said Court also framed two questions and gave answers thereto. The questions are reproduced below -

“(i) as to whether the suit was barred in view of provisions of s.57B of W.B. Estate Acquisition Act, 1953 (hereinafter referred to as the Act of 1953) or S.61 of W.B.L.R. Act, 1955 or s.51C of the W.B.L.R. Act (hereinafter referred to as the Act of 1955) or not and

ii) as to whether the plaintiff has right, title and interest over and/or in the suit property or not.”

Regarding the first question the lower appellate Court said, inter alia, as follows:-

“Now, admittedly, nowhere either in Act of 1953 or in the Act of 1955, power has been given to the Revenue Officer or any Prescribed authority to decide the question of title and taking such decision falls within the domain of Civil Court and if situation so arises that to decide question of title, one court is to look into aspect of incidents of tenancy, as to whether such suit would be barred or not.”

Answer to the question was given in the negative, on the controversy between the parties being on title.

Second question was answered on finding the Narayans were intermediaries. They retained suit property, being tank fishery. Plaintiffs were inducted and in possession to ultimately become lessees under the Government. All this in finding that plaintiff has title.

In view of aforesaid, there is no question involved in the appeal.

SAT 207 of 2016 along with CAN 2 of 2021 and CAN 3 of 2021, are dismissed.

(Arindam Sinha, J.)

(Sugato Majumdar, J.)