

08.03.2021
SL No.3
Court No.12
(gc)

**FMAT 77 of 2020
With
CAN 1 of 2020
(Old No: CAN 2673 of 2020)**

**Sri Gunda Boul Das @ Basudeb Boul Das & Anr.
Vs.
Sri Amit Chandra Pal & Ors.**

(Via Video Conference)

Mr. Tanmoy Mukherjee,
Mr. Arunava Ganguly,
...for the Appellants.
Mr. Rajen Dutta,
Mr. P.K. Banerjee,
Ms. Krishna Yadav
...for the Respondents.

By consent of the parties, the appeal is taken up at the admission stage along with the connected application.

The appellants are aggrieved by the judgment dated 18th December, 2019 by the learned District Judge, Hooghly in connection with an appeal filed by the plaintiffs/appellants against a judgment and decree passed by the learned Civil Judge (Junior Division), 2nd Court at Hooghly in Title Suit No.407/2018 in an application filed by the appellants under Section 21 of the West Bengal Land Reforms Act (in short "W.B.L.R. Act") in which the jurisdiction of the Court to decide the suit was raised and answered in favour of the present appellants.

We have perused the order of the learned Trial Judge as well as the Appellate Court. The suit is for declaration and injunction. In the said suit, the present appellants have filed an application under Section 21 of the W.B.L.R. Act for

making a reference to the BL & LRO for determination of the status of the present appellants, vis-à-vis, the suit property. The plaintiffs filed the suit for declaration and injunction in respect of the suit property described in Schedule A and Schedule B of the Plaint. The learned Trial Court did not frame any issue as to whether the status of the appellants as Bargadar needs to be referred to the BL & LRO as it is clear from the order of the learned Trial Court that at the invitation of the present appellants, the learned Civil Judge (Junior Division), Hooghly framed the following issue:

“Whether the suit is maintainable under Section 21 of the W.B.L.R. Act?”

It is trite law that if in deciding the suit the Court finds that one or many issues cannot be decided by the Court, the Court may not pronounce the judgment on such issues. The Court is also required to find out what is the primary object of the suit and the principal relief claimed in the suit. The incidental issues will not be a ground for not exercising a jurisdiction if the Court feels that the primary relief if granted to the plaintiffs would be a wholesome relief to the plaintiffs and the incidental issues could be consequential. Accordingly, the submission made on behalf of the appellants that the Court was requested to resolve the dispute to the BL & LRO for consideration of the status of the present appellants as Bargadar does not appear from the judgment of the learned Civil Judge dated 6th March, 2019. The Appellate Court, in our view, has rightly addressed the

issue and relying upon a judgment of our Court in ***Dulal Ch. Dey Vs. Anjali Dey*** reported at **92 CWN 952** where it was specifically observed that question of title can never be referred to the officer or authority under Section 21(3) of the W.B.L.R. Act and set aside the order of the learned Trial Court and directed the learned Trial Court to proceed with the suit in accordance with law and after hearing the appellants advanced by the parties without being influenced. There cannot be any doubt that the BL & LRO cannot decide the right, title and interest of the plaintiffs. The relief as to whether the plaintiffs cannot restrain the defendant from disturbing the possession is not wholly dependent on the adjudication to be made by the BL & LRO under Section 21 of the W.B.L.R. Act.

On such consideration, we do not find any reason to interfere with the order passed by the Appellate Court. We feel that there is no substantial question of law is involved as this issue has already been decided by this Court in ***Dulal Ch. Dey*** (supra). However, we observe that the appellants shall approach the BL & LRO before whom the proceeding is pending for determination of the status of the appellants and in the event any such approach is made, the said authority shall decide the said issue as expeditiously as possible as the said determination may have some bearing in the pending suit.

The Trial Court shall dispose of the suit as expeditiously as possible in terms of the order passed by the

First Appellate Court. However, the Trial Judge may give sometime to the present appellants for seeking adjudication of its status as Bargadar before the competent authority not beyond a period of three months, if prayed for without disturbing the progress of the trial as directed by the First Appellate Court. If the trial court in course of deciding the suit feels it necessary to consider the status of the appellants vis-à-vis the suit property only then such issue may be kept pending for three months and not beyond the said period. This direction is passed since we feel that keeping the said application filed under Section 21 of the W.B.L.R. Act pending would benefit the appellants and could be an excuse to delay the hearing of the suit further as it appears that the said application has been filed being bad.

With the aforesaid observation, the appeal being FMAT 77 of 2020 and the stay application being CAN 1 of 2020 (Old No: CAN 2673 of 2020) stand disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Subhasis Dasgupta, J.)

(Soumen Sen, J.)