

10.09.2021
Item No. 18
Ct. No. 04
PG

S.A. 283 of 2016
With
I.A. no. CAN 1 of 2015 (Old CAN 8792 of 2015)(not found)
Sri Gopal Chandra Giri & Ors.
Vs.
Sri Ratnakar Paul & Ors.

Mr. Buddhadeb Ghosal.....for appellants

Mr. Ghosal, learned advocate appears on behalf of appellants, who were plaintiffs in the suit for declaration and injunction. Defendants claimed to have become absolute owner by operation of provisions in West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975. He submits, his clients are aggrieved because though the suit was dismissed and same confirmed by the lower appellate Court but, same was on consideration of merits. Principal contention of defendants was upheld by both Courts below on ouster of civil Court's jurisdiction by section 14 in the 1975 Act. As such, the plaint could have been rejected by the trial Court but dismissal on consideration of merits in the judgment led to a decree, confirmed in appeal, which is a nullity. He relies on judgment of Supreme Court in **Sarwan Kumar v. Madan Lal Aggarwal** reported in **(2003) 4 SCC 147** paragraphs 20 and 21 to submit, plea of

decree being a nullity can be taken even at execution stage. Hence, there be question formulated regarding the decree being a nullity, for this appeal to be admitted.

We appreciate appellants' apprehension regarding a decision of civil Court to dismiss a suit on ouster of jurisdiction yet carrying adjudication on merits. That would cause difficulty in event appellants are advised to seek remedy, if they otherwise have it in law. The apprehension appears to arise from issues framed by the trial Court and judgment pronounced on them.

The lower appellate Court confirmed the judgment of dismissal of the suit. In doing so, we notice that the Court said as follows:

“Now the moot question is that whether civil court has any jurisdiction regarding bargadarship or order under West Bengal Acquisition of Homestead Land for Agricultural Labourers Artisans and Fishermen Act, 1975. According to S.21 of W.B. Land Reforms Act no order or other proceedings whatsoever made this chapter shall be questioned in any civil court. So the appellant should go to appellate forum if they were aggrieved and dissatisfied with order of B.C. Appeal case no.38/1977-78. Civil Court has also no jurisdiction to try any suit u/s. 12 of West Bengal Acquisition of Homestead Land For Agricultural Labourers Artisans and Fishermen Act, 1975.

Having considered the above discussion this court does not find any reason to interfere with the judgement of Ld. Court below.

The judgment that stands is of the lower appellate Court, which has clearly left it open for appellants to go to the appellate forum, if they are aggrieved and dissatisfied with order of B.C. Appeal case no. 38/1977-78, in holding that civil Court has no jurisdiction to try any suit under section 12 of West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975. We have extracted from said Court's judgment to give emphasis that it is not necessary to admit this appeal on the question of the decree being a nullity since, by operation of merger, the lower appellate Court judgment makes it clear that the dismissal of suit was not on merits.

In view of aforesaid, no question is involved in this appeal. Accordingly, the appeal with I.A. no. CAN 1 of 2015 (Old CAN 8792 of 2015) (not found), if pending, are dismissed.

(Arindam Sinha, J.)

(Sugato Majumdar, J.)