

01 11.01.2023

SAT 463 of 2006

Ct-08

**Deotananda Mishra
Vs.
Rajendra Shaw & Ors.**

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Mr. Probal Kumar Mukherjee, Sr. Adv
Mr. Siddhartha Goswami
... For the Appellant

We have heard the learned counsel appearing for the appellant.

The suit is barred under Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 read with Section 21 of the said Act.

Mr. Siddhartha Goswami, learned counsel for the appellant, submits that in the plaint two fold reliefs have been claimed. The first relief is declaration that the plaintiff is a Thika tenant. The second is cancellation of the deed. It is submitted that the defendant nos. 1 and 2 have claimed ownership by virtue of a deed of purchase on the basis of a deed of sale dated 11th July, 2003 in favour of the defendant nos. 1 and 2 by the defendant no.3 in respect of the suit property. The learned trial judge in our view we have read the copy of the plaint made over to us as rightly observed by the learned trial Judge. The primary relief is the declaration and other reliefs are merely consequential. We are unable to accept the said submission that unless the declaration is allowed, the plaintiff would not be entitled to any other reliefs. In our view, the primary relief is the declaration of the plaintiff as a Thika Tenancy in respect of the suit property.

However, we make it clear that the possessory right of the plaintiff, if any, is not

decided by the trial court nor by us.

The second appeal thus dismissed with the aforesaid observation.

This order shall not prevent the appellant to seek proper remedies in accordance with law as we have not gone into the merits of the appeal and it is dismissed for want of jurisdiction.

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)

