

10.05.2023

WPLRT 61 of 2023

Court : 04
Item : 09
Matter : WPLRT
Status : DO
Bench ID :266048
Transcriber: NANDY

Emdadul Hoque & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Samiran Giri, Advocate
Mr. Khairul Alam, Advocate
Ms. Madhumita Patra, Advocate

.....for the Petitioners

Mr. T.M. Siddiqui, Advocate
Mr. Sutanu Chakraborty, Advocate

.....for the Respondents

The scope of adjudication before the Tribunal was restricted to an order passed by the appellate authority remanding the matter to the original authority to decide afresh. Such being the scope and it appear from the tenant of the order that the Tribunal was exercising appellate jurisdiction, it is not expected from the Tribunal to exceed the peripheral of the jurisdiction or the scope of the litigation in making certain observations which were unwarranted.

The dispute relates to the correction of the entry in the record of rights on the basis of the probate granted by the competent Court in relation to a Will of a co-sharer. In an initial round of litigation when the petitioners approached the authority to correct the entry in the record of rights on the basis of the probate having granted to the Will executed by the erstwhile co-sharer, the same was allowed in part and the appeal filed against the same was dismissed. Subsequently, the private respondents filed an application for recording their names in the record of rights which having a resultant effect on deleting the names of the petitioners therefrom, which was eventually dismissed and the said order of dismissal was affirmed by the appellate authority in a statutory appeal filed under West Bengal

Land Reforms Act, 1955. Despite the said order having affirmed, a further application was taken out seeking the selfsame relief, which was allowed by the authority, and on challenge being made to the said order before the appellate authority, the same was set aside and the matter was remanded to hear out afresh.

The facts as disclosed, leaves no ambiguity in our mind that the scope of the appeal filed before the Tribunal was restricted to one issue, weather the appellate authority was justified in the remanding the matter to the original authority to hear out the application filed by the private respondents *de novo*. The Tribunal exercising such jurisdiction must restrict its findings on the circumference of the aforesaid point and should not have travelled beyond the pleadings nor can make out a new case for the party which has an impact on the title of the litigating parties. The evidentiary value of the probate granted by the competent Court has to be ascertained and it was not expected from the Tribunal to make certain observations which would stand as an obstacle to an independent adjudication by the original authority.

It appears that that the observations have been made in regard to the competence of a person governed by the Muslim Personal Law and his authority and power to bequeath the property by executing a Will (wasayatnama) in respect of its entire share. The probate Court recognises the genuinity and the authenticity of the Will and, therefore, is regarded as a judgment in rem so far as it relates to the validity of the Will is concerned. It is not expected that the Tribunal would travel beyond the pleadings or expand the horizon of the real issue involved in the proceeding and make out a case for a

party which would impede the mind of the authority to take an independent view after such remand is made.

We thus find that the impugned order warrants interference to the extent that the observations made in the impugned order relating to the competence of the testator to divest his entire share in respect of the of the property by way of a Will are beyond the scope of the adjudications and shall not be regarded to have been decided in the said tribunal application.

The aforesaid portion of the order passed by the Tribunal is hereby set aside. The Tribunal shall not be swayed by such recording of the competence of the testator in bequeathing his share by virtue of a Will.

We do not find any infirmity in remanding the matter to the original authority to consider the issues of afresh including the point of *res judicata* which is essentially a mixed question of fact and law.

We, however, expect that the competent authority before whom the matter has been remitted back, shall make endeavour to dispose of the proceedings within 6 weeks from the date of the communication of this order in accordance with law.

With these observations, the writ-petition being **WPLRT 61 of 2023** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

