

22-01-2024
Item no.22
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO No.1161 of 2022
Banshilal Poyra @ Parya
-vs-
Saroj Kumar Pramanik & Ors.

Mr. Sandip Das ...for the petitioner

None ...for the opposite parties

Affidavit of service filed in court be taken on record.
However, none represents the opposite parties.

This revisional application under Article 227 of the Constitution of India is directed against an order dated December 23, 2021 passed by the learned Civil Judge (Junior Division), Kakdwip in Title Suit No.121 of 2019 wherein the petitioner is the defendant no.4.

The contention of the petitioner in the trial court was that an application under section 21(3) of the West Bengal Land Reforms Act, 1955 was filed for hearing of the same. However, learned court below adjourned that application saying that it would be heard at the time of framing of issues.

Learned advocate for the petitioner submits that the learned judge erred in keeping the application under section 21(3) of the 1955 Act in abeyance till the framing of issues.

In this context, he has referred to section 21(3) of the West Bengal Land Reforms Act, 1955 Act which is as follows:–

“21(3). If any question as to whether a person is or is not a *bargadar* arises in the course of any suit, case, appeal or other

proceedings before any Civil or Criminal Court, the Court shall refer it to the officer or the authority mentioned in sub-section (1) of section 18 for decision and such Court shall dispose of the suit, case, appeal or other proceedings in accordance with the decision communicated to it by the officer or authority mentioned in sub-section (1) of section 18 to whom the question was referred.”

Learned advocate for the petitioner has relied upon a decision of this court in the case of **Dulal Chandra Dey –vs– Sm. Anjali Dey** reported in **92 CWN 952**. In para.3 of the said judgement, it was observed by the learned single Judge as follows:–

“This Court has considered all the submissions made either by Mr. Mukherjee for the petitioner or by Mr. Dutta for the opposite party. It is very clear that since it is a duty of the court to refer the matter to the appropriate authority under section 21(3) of the West Bengal Land Reforms Act, the previous order of dismissal for default does not stand as a bar and the earlier orders are no impediment to the consideration of the question of reference as envisaged under section 21(3) of the West Bengal Land Reforms Act. The question of determination and/or nomination by the appropriate authority under section 15(a) of the Act has got to be considered as to whether until such determination and/or nomination the Reference would be sent at all or if the Reference is made the same would abide by the result of nomination and/or determination. The question of title is never to be referred to any authority as the Civil Court is the only appropriate forum for the adjudication of title but a person may have more than one capacity. If in the instant case, there is at all any question of claim by a Bargadar as it appears in the written statement and an issue has been framed, the learned Munsif will have no other alternative but to refer the dispute to the authority as indicated under section 21(3) of the West Bengal Land Reforms Act.”

The plaintiffs in the instant suit have claimed themselves to be the *bardagar* and have prayed for protection of their rights in the suit land/*bargaland* and such right is denied in written statement. Before proceeding to establish the rights of the parties in the suit,

the issue as to whether the plaintiffs are the *bargadar* or not is to be decided by the competent authority as provided under section 21(3) of the 1955 Act. Thus, adjudication cannot be deferred till the framing of issues, as on the face of the plaint the matter refers to a right of the *bargadar* with regard to the suit property.

Thus, considering the facts of the case and the submission made by the petitioner, I allow the instant revisional application setting aside the impugned order dated December 23, 2021 passed by the learned court below.

The matter is remitted back to the learned trial court for considering and deciding the application made by the defendants under section 21(3) of the West Bengal Land Reforms Act, 1955 in accordance with law, after hearing the parties and to take a reasoned decision. The decision shall be taken at an early date, preferably within two months from the date of communication of this order.

It is hereby made clear that the court has not gone into the merits of the suit and all points are left open before the learned trial court.

CO No.1161 of 2022 stands, thus, disposed of.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

[Biswaroop Chowdhury, J]

