

IA No. GA 1 of 2022
APOT No. 179 of 2022
with
EOS No. 58 of 1987
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Dina Nath Parolia & Anr.
Versus
Bhartia Steel And Engineering Company Pvt. Ltd.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 16th January 2024

Appearance:
Mr. Debnath Ghosh, Advocate
Mr. Sarosij Dasgupta, Advocate
Ms. Saheli Bose, Advocate
for the appellants

Mr. Utpal Bose, Sr. Advocate
Ms. Madhupriya, Advocate
Mr. Aniruddha Sinha, Advocate
for the respondent

The Court: As these legal proceedings are pending for a considerable length of time, we do not wish to keep this appeal pending.

We are disposing of it after admitting it, by this judgment and order, on dispensing with all formalities.

A suit for eviction involving a property on Dharmatala Road in Howrah was filed in 1985 in the Howrah Court and tried in this court on transfer.

On 9th December 2014 a part decree was passed directing eviction of the appellant. The other part of the decree directed an inquiry into and award of mesne profits.

The part of the decree directing eviction was affirmed by the appeal court on 27th July 2017. A Special Leave Petition against that judgment and decree was dismissed by the Supreme Court.

In other words, an ordinary suit arising out of a lessor-lessee relationship was finally decreed directing eviction of the appellant and award of mesne profits as assessed by a Special Referee.

The bone of contention in this appeal is quite an extraordinary plea which was raised before the Special Referee by the appellants. They stated before him that it had come to light that the suit property had vested in the state government and had become thika property under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 1981 and continued to be so under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. Mr. Debnath Ghosh, learned counsel appearing for the appellants stated that by a document of 2005 he would be able to prove that the property had so vested. He wanted a direction from the Special Referee to recall the witness of the respondent before her and to cross-examine him on that point. It was refused by her.

An application was made before the court complaining of the decision of the Special Referee which resulted in the impugned judgment and order dated 7th September 2022 rejecting the prayer of the appellants.

Learned counsel for the appellants made very forceful arguments based on *K. K. Velusamy vs. N. Palanisamy* reported in (2011) 11 SCC 275. In this case the Supreme Court ruled that the court had power under Order XVIII Rule 17 read with section 151 of the Civil Procedure Code to recall a witness and obtain further evidence from him if the facts of the case so required.

This proposition cannot be doubted by anybody.

Mr. Ghosh citing *Sarwan Kumar & Another vs. Madan Lal Aggarwal* reported in (2003) 4 SCC 147 submitted that a decree by a court inherently lacking in jurisdiction was a nullity. The said decree was a nullity in the eye of law, since the property had vested in the State as thika property and the civil court had no power under the said Act to go into any question regarding such property. The point could be taken at any time and even at the execution stage.

The question is whether in the facts and circumstances of the present case, the prayer in this application should be allowed.

First of all, throughout the carriage of proceedings the question whether the property was thika or not was not raised at any stage. On the basis of an ordinary suit between landlord and tenant or lessor and lessee the suit was entertained, tried and decreed and the decree affirmed upto the Supreme Court.

There are obstacles in the way of Mr. Debnath Ghosh's client.

First of all, a decree affirmed upto the stage of the Supreme can only be reopened by a competent forum and this court in its appellate jurisdiction is not one of them. It cannot be said that the suit as framed and prosecuted or the proceedings upto the Supreme Court were a nullity or that the courts had inherent lack of jurisdiction, as the thika issue was never raised.

Therefore, the purpose which the appellants seek to achieve by agitating that the property is thika property and hence the said decree of the court was a nullity and had no effect on them has little or no relevance. The appellants would have to first get the decree set aside or stayed by a competent court before venturing on this line.

At any rate, the issue whether the property is thika or not under the said act can only be tried and determined by the

Controller. The Special Referee or even this court does not have the competence to try this issue.

In those circumstances the question whether the appellant would be allowed to recall the respondent's witness and cross-examine him is answered in the negative.

Our observations are to be taken as tentative. We leave it open to the appellants to take an exception to the report of the Special Referee as and when it is signed and published which shall be decided by the learned trial judge while awarding mesne profits.

The appeal and the connected application are disposed of accordingly.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose