

In The High Court At Calcutta
Civil Revisional Jurisdiction
Appellate Side

CO 2520 of 2012

Sri Pranab Kumar Maity & Anr.
-Vs.-
Sri Tapas Kumar Bhattacharya

Coram : The Hon'ble Justice Arijit Banerjee
For the petitioner : Mr. Asish Bagchi, Adv.
For the opposite party : Mr. Supratim Dhar, Adv.
Heard On : 08/01/2015 & 29/01/2015
Judgment On : 10/04/2015

Arijit Banerjee, J.:

(1) This revisional application has been filed challenging the judgment and order dated April 30, 2012 passed by the Ld. Additional District Judge, 4th Fast Track Court, Tamluk, Purba Medinipur, in Civil Revision Case No. 2 of 2008 affirming the order dated February 17, 2007 passed by the Ld. Civil Judge (Junior Division), 3rd Court, Tamluk, Purba Medinipur, in J. Misc. Case No. 28 of 2005 holding that the decree passed in Title Suit No. 131 of 2001 was not executable.

(2) One Balai Charan Maity (since deceased), predecessor-in-interest as well as father of the petitioners instituted Title Suit No. 168 of 1977 in the

3rd Court of Munsif, Tamluk, Purba Medinipur against the State of West Bengal & Ors. claiming declaration of title and permanent injunction in respect of the suit property.

(3) The said Balai Charan Maity died during the pendency of the said suit and the petitioners along with their mother Ashalata Maity (since deceased), were substituted as plaintiffs in the place and stead of the said Balai Charan Maity in Title Suit No. 268 of 1977.

(4) In the said title suit a judgment and decree dated 25th May, 1982 was passed whereby the title of the petitioners in respect of the suit property was declared and the defendants were permanently restrained from disturbing the peaceful possession of the petitioners in respect of the suit property.

(5) In spite of the said decree, the State of West Bengal failed to take any step for correction of the record of rights.

(6) The petitioners and their mother Ashalata Maity (since deceased) then filed a suit on judgment in September, 2000 being Title Suit No. 131 of 2000 in the 3rd Court of Civil Judge (Junior Division), Tamluk. The said suit was decreed ex parte on 17th September, 2002 whereby the defendants were ordered to correct the record of rights in respect of the entries made therein by inserting the names of the plaintiff in respect of the land stated in the schedule to the plaint. The defendants were further restrained from

interfering with the peaceful possession and occupation of the land in question by the plaintiffs.

(7) The mother of the plaintiffs, Ashalata Maity, died on June 21, 2004, leaving the petitioners as her only heirs and legal representatives.

(8) The petitioners put the decree passed in Title Suit No. 131 of 2000 into execution by instituting Title Execution Case No. 6 of 2004 before the 3rd Court of Civil Judge (Junior Division), Tamluk. The opposite parties filed their written objection to the execution case and the same was registered as J. Misc. Case No. 28 of 2005 under Section 47 of the Code of Civil Procedure.

(10) By the order No. 35 dated February 17, 2007 passed in J. Misc. Case No. 28 of 2005, the Ld. Trial Court held that the decree passed in Title Suit No. 131 of 2000 was not executable.

(11) Against the said order the petitioners filed a revision application under Section 115A of the Code of Civil Procedure being Civil Revision Case No. 3 of 2007 before the Ld. District Judge of Purba Medinipur at Tamluk. The said case was transferred to 4th Fast Track Court of Additional District Judge, Tamluk for hearing and was registered and re-numbered as Civil Revision Case No. 2 of 2008.

(12) By a judgment and order dated April 30, 2012, the Ld. Additional District Judge, 4th Fast Track Court, Tamluk dismissed Civil Revision Case No. 2 of 2008 and affirmed the order dated February 17, 2007 passed by the Ld. Trial Court. Being aggrieved, the petitioners are before this Court by way of the instant revisional application.

(13) The short question that emerges for consideration is whether or not the judgments of the Courts below suffer from such glaring infirmity so as to warrant interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

(14) Appearing in support of the application Ld. Counsel placed the decrees passed in the two Title Suits as also the plaints of the said title suits. He then relied on a decision of this Court in the case of *Kazi Mohammad Hossain-vs.-Sibram Bandopadhyay reported in 70 CWN 1066*. As I read it the said decision deals with the presumption of correctness of all the entries in the record-of-rights that arises under Section 103B(5) of the Bengal Tenancy Act, 1985 and Section 44 (4) of the West Bengal Estates Acquisitions Act, 1953. In that context this Court held that a statutory presumption cannot operate and prevail against res judicata. A subsequent entry in the record-of-rights which is made either by ignoring a Civil Court's decision or by disregarding it cannot carry a presumption of accuracy

because such a presumption can only arise where there has been no previous adjudication of the question by a properly constituted Civil Court. After such an adjudication by a competent Civil Court of the very point, the matter passes beyond the stage where presumption can operate and no scope for operation of presumption is left. The court further held, once a decision of the Civil Court is rendered after evidence no subsequent entry in the record-of-rights can alter this decision or modify it and, therefore, there can be no presumption of its accuracy when it is patently and expressly in conflict with the decision of the Civil Court. To come to another conclusion will be to make the Settlement Officer and his record-of-rights as a kind of appellate authority over the Civil Court, a situation which the law does not recognize. The decision of the Trial Court subject of course to appeals and revisions under the law should be binding on the parties and the Settlement Authority making the record-of-rights. The Settlement Authorities are bound by the Civil Court decree already on record. Ld. Counsel also relied on another decision of this Court in the case of *Md. Akbar-vs.-Ismail reported in (2015) 1 WBLR (Cal) 272* which relied on the case of *Kaji Mohammad Hossain (Supra)* and followed the decision in that case. Relying on the aforesaid decisions Ld. Counsel submitted that the Settlement Authority is bound by a

decree of the Civil Court and once the Civil Court directs the correction of the record-of-rights, the Settlement Authority is bound to do so.

(15) Appearing on behalf of the opposite parties, Ld. Counsel submitted the decree dated 17th December, 2002 passed in Title Suit No. 131 of 2000 is a nullity and as such the Courts below have rightly held the same to be not executable. Firstly, he submitted that Title Suit No. 131 of 2000 was filed by suppressing the factum of Title Suit No. 268 of 1977 and the decree dated 25th May, 1982 passed in such earlier suit. Secondly, he drew this Court's attention to Section 57B (2) of the West Bengal Estate Acquisition Act, 1953 which is set out hereunder:-

“(2) No Civil Court shall entertain any suit or application concerning any land or any estate, or any right in such estate, if it relates to_

(a) alternation of any entry in the record-of-rights finally published, revised, made, corrected or modified under any of the provisions of Chapter V,

(b) a dispute involving determination of the question, either expressly or by implication, whether a reiyat or an intermediary, is or is not entitled to retain under the provisions of this Act such land or estate or right in such estate, as the case may be, or

(c) any matter which under any of the provisions of this Act is to be, or has already been, enquired into, decided, dealt with or determined by the State Government of any authority specified therein, and any such suit or application which is pending before a Civil Court, immediately before the commencement of the West Bengal Estates Acquisition (Second Amendment) Act, 1973 (West Ben. Act XXXIII of 1973), shall abate so far as it relates to all or any of the matters referred to in clause (a), clause (b) or clause (c).”

(16) Relying on the aforesaid statutory provisions Ld. Counsel submitted that the Civil Court lacked jurisdiction to entertain Title Suit No. 131 of 2000 and as such the decree passed in such suit is null and void and thus, incapable of execution. Ld. Counsel relied on a judgment and order dated 30th August, 2011 passed by a Division Bench of this Court in *W.P.L.R.T 169 of 2011 (Mina Chaki-vs.-State of West Bengal)* wherein this Court recognized the bar on Civil Court imposed by Section 57B of the West Bengal Estate Acquisition Act, 1953.

(17) I have considered the rival contentions of the parties. A provision similar to Section 57B of the West Bengal Estates Acquisition Act is also there in the West Bengal Land Reforms Act. Section 51C(2) of the West Bengal Land Reforms Act provides that no Civil Court shall entertain any

suit or application concerning any land if it relates to alteration of any entry in the record-of-rights finally published, revised, corrected or modified under any of the provisions of this Chapter. The Ld. Trial Court relied on Section 57B of the West Bengal Estates Acquisition Act and Section 51C of the West Bengal Land Reforms Act and held that the Civil Court lacked inherent jurisdiction in the matter relating to correction of record-of-rights and as such the decree passed is not executable. The Lower Appellate Court agreed with the Ld. Trial Judge and held that the decree passed is not sustainable in the eye of law and is null and void.

(18) I am inclined to agree with the views of the courts below. Admittedly Title Suit No. 131 of 2000 was filed primarily for correction of record-of-rights. However, the provisions of Section 57B of the West Bengal Estates Acquisition Act and Section 51C of the West Bengal Land Reforms Act seem to be a complete bar to the jurisdiction on a Civil Court to entertain such a suit. In my view, the Civil Court lacked inherent jurisdiction to entertain the said suit or pass any decree thereon. I am conscious that an executing court normally has no power to go behind the decree. However, a well-established exception to the said rule is when the court passing the decree lacks inherent jurisdiction. In such a case the decree would be non-

est in the eye of law and nullity. The executing court can and indeed should refuse to execute such a decree.

(19) I, therefore, find no glaring infirmity in the judgment and order impugned in this application. The law is well-settled that the power and duty of the High Court under Article 227 of the Constitution of India is essentially to ensure that the Courts and Tribunals, inferior to the High Court, have done what they were required to do. The High Court can interfere under Article 227 in cases of erroneous assumption or acting beyond jurisdiction by the Lower Court, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure arriving at a finding which is perverse or based on no material or resulting in manifest injustice. In my opinion, no ground has been made out by the petitioner for interfering with the judgment and order impugned.

(20) In view of the aforesaid this application fails and is dismissed.

(Arijit Banerjee, J.)