
(2013) 06 CAL CK 0020
In the Calcutta High Court
Case No : W.P.L.R.T. No. 151 of 2013

Ashraf Hossain Tarafdar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Citation : (2013) 4 CHN 309

Hon'ble Judges : Subhro Kamal Mukherjee, J; Asim Kumar Mondal, J

Bench : Division Bench

Advocate : Mahadeb Sarkar, for the Appellant; Jagadish Ch. Das and Binoy Kr. Das, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an application under Article 226 of the Constitution of India against the judgment and order dated December 21, 2012 passed by the West Bengal Land Reforms and Tenancy Tribunal in Original Application No. 1872 of 2012. The petitioners instituted Title Suit No. 83 of 1981 in the Court of the learned Munsif at Bongaon, inter alia, for declaration of title and permanent injunction. The suit was decreed by judgment and decree dated May 27, 1989 declaring right, title, and interest of these petitioners in the suit property. The defendants were restrained by permanent injunction from interfering with the possession of the plaintiffs in relation to the suit property.

2. State of West Bengal was the principal defendant in the said suit.

3. No appeal was filed. Therefore, the State of West Bengal accepted the decree passed by the Civil Court.

4. The petitioners went to the authority concerned for correction of record-of-rights on the basis of the decree of the Civil Court. That was declined.

5. The tribunal opined that the suit was expressly barred u/s 57B of the West Bengal Estates Acquisition Act, 1953.

6. In Sudharani Maity and others v. State of West Bengal and others, reported in

2003(1) CHN 1 a Division Bench of this Court observed that the said Tribunal has no jurisdiction to nullify the effects of the decree passed by the competent Civil Court. It was, further, observed that the Tribunal had exceeded its jurisdiction by holding that the decree of the Civil Court, affirmed in appeal, was without jurisdiction and, therefore, the decree was void and not binding on the State authorities.

7. The State of West Bengal was a party to the suit. The findings are not only binding on the State authorities but it, also, operate as *res judicata*. It is unconscionable to think that, in view of the bar imposed u/s 57B of the said Act, a contested decree passed by a Civil Court, in presence of the State of West Bengal, could be treated as a nullity.

8. In *Ayubali Sardar and another v. Derajuddin Mallick and others* reported in 1975(2) CLJ 305 a Division Bench of this Court held that notwithstanding an entry adverse to the plaintiffs claim, a suit for declaration of title based on an independent cause of action is maintainable in law and nothing prevents a correction of the erroneous entry in the relevant record-of-rights. Further, it was observed that a question or dispute, which did not at all fall for determination for the purpose of preparation or revision of the record-of-rights would not come within the purview of section 57B of the said Act and, consequently, the entertaining a civil suit for determination of such a dispute or question was not barred nor was it so intended.

9. In *Sm. Jharna Ghosal Vs. Satyendra Prosad Dhar*, another division bench of this Court held that section 57B of the said Act did not either expressly or by necessary implication exclude the jurisdiction of Civil Courts to decide questions of title.

10. The incidental prayer for declaration that their record-of-rights was wrong did not bring the suit within the mischief of section 57B of the said Act.

11. We hold that it was not fair on the part of the Block Land and Land Reforms Officer to ignore a decree passed by a competent Civil Court when the State of West Bengal was a party in such suit.

12. The West Bengal Land Reforms and Tenancy Tribunal does not have the jurisdiction to nullify the effect of a contested decree passed in a civil suit when the State was one of the contesting parties, section 57B of the said Act merely oust the jurisdiction of the Civil Court to entertain certain classes of suit, but it does not debar the civil Court from entertaining suits not relating to matters not specified in sub-section (1) as well as clauses (a), (b) and (c) of sub-section (2) of section 57B of the said Act. When in a suit the principle issue is question of title, a prayer for declaration that record-of-rights is wrong does not bring the suit within the mischief of section 57B of the said Act.

13. Hence the approach of the authorities were erroneous. They exceeded their jurisdiction in refusing to correct the record-of-rights on the basis of the decree

of the Civil Court, as aforesaid. Record-of-rights is not a document of title and it must yield to a decree of Civil Court.

14. The Writ Petition, therefore, stands allowed and we command the Block Land and Land Reforms Officer concerned to correct the record-of-rights in terms of the decree passed by the Civil Court, as aforesaid. We make no order as to costs.

Asim Kumar Mondal, J.

I agree.