
(1947) 02 CAL CK 0018
In the Calcutta High Court

Bonamali Pramanik and Others

APPELLANT

Vs

Radhagobinda Ghosh

RESPONDENT

Date of Decision : 07-02-1947

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 37A, 37A(8)
Civil Procedure Code, 1908 (CPC) — Section 115, 47

Citation : AIR 1947 Cal 388

Hon'ble Judges : Akram, J

Bench : Division Bench

Judgement

Akram, J.—In R.S. No. 404 of 1935 one Radha Gobinda Ghose, landlord, obtained a rent decree against the tenant Bon Behari Pramanik and two others. In execution of that decree he purchased the defaulting jote on 19-3-1937 and took delivery of possession of the same on 28-8-1937. The judgment-debtors thereafter, sometime in 1943, made an application u/s 37A, Bengal Agricultural Debtors Act, before the Chandaikona Debt Settlement Board for setting aside the sale and getting back possession of the property sold. The Debt Settlement Board, on 30-9-1943 made an award purporting to be under the said Section 37A of the Act, in favour of the applicants holding that the decree-holder had recovered more than what was due to him and that nothing further remained due from the applicant to the decree-holder. The applicants thereafter filed the award before the executing Court as required u/s 37A(8) of the Act and the Court then on 19-8-1944, passed an ex parte order directing delivery of possession to the applicants judgment-debtors.

2. Against that order the decree-holder appealed and the learned Judge in the Court below reversed the decision of the Court of first instance and dismissed the application of the judgment-debtors for restoration of possession. Being dissatisfied with the order of the learned Judge in the Court of appeal below the judgment-debtors preferred the present appeal.

3. It has been urged before me by the learned Advocate on behalf of the

appellants that no appeal lay before the lower appellate Court, as the order passed by the Munsif does not fall within the scope of Section 47, Civil P.C. It is said that the application by the judgment-debtors on the basis of Section 37A of the Act cannot be considered to have any connection with the execution, discharge or satisfaction of the decree within the meaning of Section 47, Civil P.C. Section 37A(8) of the Act, however, lays down that the civil Court shall on getting a copy of the award direct that the sale be set aside, etc. etc., and the debtor...be restored to possession of the property, etc. etc. It seems to me, therefore, that if there be a dispute with regard to the question of restoration of possession after setting aside the sale, the matter will relate to execution of the decree and would, therefore, come within the scope of Section 47 of the Code.

4. Assuming, however, that Section 47 of the Code is not applicable and that Section 151 of the Code applies, even then I should be reluctant to interfere with the order of the Court of appeal below u/s 115, Civil P.C., as it appears to me that the order passed by the-said Court is a correct order. This point, therefore, in my opinion, fails.

5. Next it is urged that the Court of appeal below is in error in holding that Section 37A was not applicable to the present case, inasmuch as there was no debt outstanding. Looking at Sub-section (5) of the said Section 37A of the Act it seems to me that the applicant must be found to be a debtor at the time of the award, as Sub-Section (5) directs that "after making the estimate referred to in Sub-Section (4), the Board shall make an award directing the applicant to pay annually in cash to the decree-holder etc. etc." Sub-section (9) also seems to support that view as it "restrains a debtor restored to possession under Sub-Section (8) from alienating the property by sale, lease, gift etc., so long as there remains unpaid any sum payable under an award made under Sub-Section (5)." It seems to me to be clear, therefore, that when no liability is found to exist at all, as in the present case, Section 87A, Bengal Agricultural Debtors Act can have no application.

6. I accordingly uphold the order passed by the learned Judge in the Court of appeal below and dismiss this appeal with costs. No order is necessary on the application u/s 115, Civil P.C. Leave to appeal under Clause 15, Letters Patent is granted.