
(1939) 07 CAL CK 0020
In the Calcutta High Court

Digambar Ponda and Another

APPELLANT

Vs

Satish Chandra Das

RESPONDENT

Date of Decision : 18-07-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : AIR 1939 Cal 717

Hon'ble Judges : Derbyshire, C.J; Nasim Ali, J

Bench : Full Bench

Judgement

Nasim Ali, J.—This is an appeal against an order of the District Judge of Midnapore dated 17th December 1938, confirming the order of the Subordinate Judge, Second Court of Midnapore, dated 3rd December 1938, in a proceeding u/s 26-G, Bengal Tenancy Act. The learned District Judge has dismissed the appeal on the ground that no appeal against the order of the Subordinate Judge lay to him. The question for determination in this appeal therefore is whether an appeal to the lower Appellate Court from the order of the Subordinate Judge was competent. Section 26-G(6) is in these terms:

An application under Sub-section (5) shall be accompanied by a process fee of the prescribed amount for service of notice on the mortgagee, and the Court or Revenue Officer to whom such an application is made, may, after service of such notice, award to the mortgagor such compensation as appears equitable in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession and may pass an order restoring the possession of the land mortgaged to the mortgagor and such order shall have the effect of a decree of a Civil Court.

2. The contention of Mr. Das, on behalf of the appellants, is that the order of the Subordinate Judge is appealable, as Sub-section (6) of Section 26-G definitely states that the order shall have the effect of a decree of a Civil Court. The Bengal Tenancy Act, however, nowhere provides for an appeal against an order in a proceeding u/s 26-G though we find provisions in other Sections of the Act where

an appeal has been provided for against other orders. Mr. Das contended that the order of the Subordinate Judge being a decree of a Civil Court was appealable u/s 96, Civil P.C. The decree contemplated by Section 96 of the Code however is a decree made in a suit. A proceeding u/s 26-G is started by an application and not by a plaint, and consequently the order u/s 26-G cannot be said to be an order in a suit. The order complained against therefore was not appealable before the District Judge. The learned District Judge was therefore right in dismissing the appeal. The appeal is accordingly dismissed with costs the hearing-fee being assessed at two gold mohurs.

Derbyshire, C.J.

3. I agree.