

(1941) 01 CAL CK 0023
In the Calcutta High Court
Case No : Civil Revision No. 1457 of 1940

Guru Prosad Pal

APPELLANT

Vs

Sheikh Karim Bux Chakdar and Another

RESPONDENT

Date of Decision : 03-01-1941

Acts Referred:

Citation : (1941) 01 CAL CK 0023

Judgement

Henderson, J.—The question raised in this Rule is whether the Opposite Party's remedy is by an application under sec. 144 of the Code of Civil Procedure, or by a suit. The solution of the question depends upon the peculiar provisions of sec. 26G of the Bengal Tenancy Act. The relevant facts are as follows:

A certain property was mortgaged by the predecessor-in-interest of the Petitioner in favour of Opposite Party No. 1 and the predecessor-in-interest of Opposite Party No. 2. The contention of the Petitioner is that those mortgages were usufructuary mortgages. He accordingly applied under sec. 26G (5) and (6) of the Bengal Tenancy Act to be put into possession. His application was dismissed. He appealed to the District Judge who allowed the appeal and in accordance with that decision the Petitioner was put into possession. The Opposite Parties then applied to this Court in revision with the result that the decision of the District Judge was set aside and that of the Munsif restored. The Opposite Parties then applied for restitution under sec. 144 of the Code of Civil Procedure.

2. The Munsif allowed the application and directed the Opposite Parties to be put into possession and awarded compensation for the value of the crops which had been taken away by the Petitioner. The Petitioner then appealed to the District Judge who, without deciding the appeal on the merits, dismissed it as incompetent and barred by limitation. The Petitioner apparently accepted the opinion of the District Judge that the appeal was incompetent and, instead of filing a second appeal, applied to this Court in revision and obtained the present Rule.

3. Now sub-sec. (6) of sec. 26G of the Bengal Tenancy Act provides that an order

restoring possession of the land mortgaged to the mortgagor shall have the effect of a decree of the Civil Court. There is no provision that an order rejecting an application shall have such an effect. The result is that, while the orders of the Munsif and of this Court did not have the effect of a decree of the Civil Court, the order of the District Judge did have such an effect.

4. The present application is based upon the fact that the order of the District Judge was reversed by this Court. Inasmuch as that order has the effect of a decree of the Civil Court, the Opposite Parties were bound to apply under sec. 144 of the Code of Civil Procedure, and a suit by them would have been barred. The Rule is accordingly discharged. I make no order as to costs.