
(1950) 06 CAL CK 0029

In the Calcutta High Court

Case No : Civil Rule No's. 1705 and 1706 of 1949

Jatindra Nath Patra and Others

APPELLANT

Vs

Bhutnath Patra and Another

RESPONDENT

Date of Decision : 22-06-1950

Acts Referred:

Bengal Agricultural Debtors Act, 1936 — Section 37, 37A, 37A(1), 40

Citation : AIR 1950 Cal 531

Hon'ble Judges : Sen, J;K.C. Chunder, J

Bench : Division Bench

Advocate : Sambhu Nath Banerjee, for the Appellant;Sarat Chandra Janah in 1705 and Arun Kumar Janah in 1706, for the Respondent

Judgement

Sen, J.—These two rules arise out of proceedings before the Debt Settlement Board. The first Rule 1705 of 1949 arises out of an order passed in revision u/s 40A, Bengal Agricultural Debtors Act by the learned District Judge.

2. The facts are these: The petitioners were applicants u/s 37A, Bengal Agricultural Debtors Act. They impleaded one Chitramoyee Devi as the landlord. She pleaded that she had transferred the property to one Bhutnath Patra before 20th December 1939, and that therefore no relief could be obtained by the petitioners. The Board held that there was no transfer before that date. Bhutnath Patra appealed although he was not a party to the proceedings and the Appellate Officer dismissed the appeal. Against that order Bhutnath Patra moved the District Judge and the appeal was allowed.

3. It is contended on behalf of the petitioners that Bhutnath Patra had no locus standi to prefer the appeal and therefore the order allowing Bhutnath's appeal should be set aside. We are of opinion that there is no answer to this contention and the order passed by the District Judge in so far it allowed Bhutnath Patra's appeal must be set aside. The rule is accordingly made absolute. There will be no order for costs.

4. The second Rule 1706 of 1949 arises out of the same proceedings before the Debt Settlement Board. The contention of the landlord was that the petition was not maintainable by reason of the fact that the provision of Section 37A (1) (b) (i), Bengal Agricultural Debtors (Amendment) Act 1940, was not complied with. Section 37A (1) (b) (i) is in the following terms:

"374. (1) When any immovable property of any person has been sold after the twelfth day of August 1935, in execution of a decree of a civil Court or a certificate under the Bengal Public Demands Recovery Act, 1913, relating to a debt other than a certificate for the recovery of any amount payable under an award, such person or his heir, executor or administrator may, notwithstanding anything contained in this Act or in any other law for the time being in force or in agreement, apply for relief under this Section, if the following conditions are fulfilled, namely, (b) if the sale was held --

(i) before an appointment was made under Sub-section (2) of Section 3 in relation to the Board established for the local area within which such person ordinarily resided at the time of the sale."

5. It was pointed out that the sale was not held before the appointment mentioned in Section 37A (1) (b) (i). The answer of the tenant was that although the sale was not so held nevertheless the application was maintainable inasmuch as it complied with the provision of Section 37A (1) (b) (iii) that is to say, in as much as the sale was held before the commencement of the Bengal Agricultural Debtors (Amendment) Act, 1940. It was argued that if any of the conditions contained in Section 37A (1) (b) (i) to (iii) was complied with the applications would be entertainable.

6. This contention has not found favour with the Courts below. We agree that if any of the conditions contained in Section 37A (1) (b) (i)-(iii) are complied with the applications would be entertainable but we are of opinion that the condition laid down in Section 37A (1) (b) (iii) has not been complied with. It is true that the sale was held before the commencement of Bengal Agricultural Debtors (Amendment) Act, 1940, but that is not enough. The applicant u/s 37A in order to get the benefit of Section 37A (1) (b) (iii), must show that the case was of a debt for arrears of rent in respect of which the applicant was liable jointly with some other persons. The words of Section 37A (1) (b) (iii), Bengal Agricultural Debtors (Amendment) Act, 1940, are as follows:

"* * * * (iii) Before the commencement of the Bengal Agricultural Debtors (Amendment) Act, 1940, in the case of a debt for arrears of rent in respect of which such person was liable jointly with any other person."

In the present case the petitioners have made a joint petition that they are not liable jointly for any debt with any other person. The words "any other person" clearly mean some person other than the petitioner or petitioners. In these circumstances we are of the opinion that the application is not maintainable.

7. The Rule is accordingly discharged with costs.

K.C. Chunder, J.

I agree.