
(1978) 04 CAL CK 0001
In the Calcutta High Court
Case No : Civil Revision No. 503 of 1977

Kalyani Bandopadhyay

APPELLANT

Vs

Anima Rani Basu

RESPONDENT

Date of Decision : 18-04-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151
West Bengal Land Reforms Act, 1955 — Section 57, 8, 9(1), 9(6)

Citation : (1978) 2 ILR (Cal) 66

Hon'ble Judges : S.K. Datta, J

Bench : Single Bench

Advocate : Jamini Banerjee and Tapas Kumar Mukherjee, for the Appellant;
Harinarayan Mukherjee, for the Respondent

Judgement

S.K. Datta, J.—This Rule is directed against an order No. 39 dated December 4, 1976. It appears that the opposite party, who is a pre-emptee in a pre-emption proceeding u/s 8 of the West Bengal Land Reforms Act, 1955, filed an application under Order IX, Rule 13 for setting aside an ex parte order dated December 1, 1973, allowing pre-emption on the ground of non-service of notice. It was stated in the application filed on March 11, 1974, that there was no service of the notice of the application u/s 8 of the Land Reforms Act on her which was fraudulently suppressed and as a result she could not appear when the ex parte order was passed. The application under Order IX, Rule 13 as also u/s 151 of the CPC for setting aside the ex parte order and re-hear the pre-emption case was allowed by the order which has been impugned in this rule. The learned Munsif was of opinion that as, u/s 9, Sub-section (6) of the said Act an appeal is provided, there is no occasion for exercising inherent power of the Court. It was, further, held that the application under Order IX, Rule 13 was maintainable and by the impugned order the proceeding under the Misc. case under Order IX, Rule 13 was directed to continue for which a pre-emptory date of hearing was fixed.

2. Mr. Banerjee, learned Advocate for the pre-emptor Petitioner, contends that

there was an alternative remedy available to the pre empte under provision of Section 9(6) of the Land Reforms Act which was not availed of by her. This provision, if it was contended, provides for an appeal from any order of the learned Munsif in such preemption proceedings. As such, in view of this provision, there was no scope for moving the Court under any other provision of the Code of Civil Procedure. Mr. Banerjee also drew my attention to the provision of Section 57 of the Land Reforms Act which provides for exercise of the powers of a civil Court by any officer, dealing with proceeding under this Act. for the purpose of enforcing attendance of witnesses, production of records or documents or for enforcing or executing the orders including order for restoration of possession as if such orders are decrees of a civil Court. According to Mr. Banerjee, no power to entertain an application under Order IX, Rule 13 has been conferred on the learned Munsif so that the instant application was not maintainable.

3. Section 57 in terms confers on any officer dealing with the proceeding under this Act limited powers of certain provision of the CPC as noted above. It may be noted that adjudication of disputes u/s 8 of the Act, the aid of the hierarchy of the civil Courts under the Bengal, Agra and Assam Civil Courts Act, 1887, has been taken. The functions that these Courts are required to discharge are purely judicial. It has been observed in *Kerala Electricity Board v. T.P. Kunhaliuama* AIR 1957 S.C. 282:

Where by statutes matters are referred for determination by a court of record with no further provision, the necessary implication is that the court will determine the matters as a court.

The Munsifs and the District Judges as Courts of Records have been conferred the powers to adjudicate claims u/s 8 of the Act being Courts. Accordingly, the provisions of the CPC in relation to the hearing and disposal of such applications by the Munsif in accordance with provisions of Section 9(1) as also of appeals from his orders thereunder are applicable to such proceedings. The provisions of Section 57 are not applicable to Courts as they are only applicable to officers dealing with proceedings under the Act and certain provisions of the Code have been made applicable to such proceedings. The learned Munsif rightly held that the application under Order IX. Rule 13 is maintainable in law.

4. The Rule, accordingly, fails and is discharged.