

(1948) 12 CAL CK 0009

In the Calcutta High Court

Case No : Civil Rules No's. 728 and 729 of 1948

Kishori Mohan Pal

APPELLANT

Vs

Sudha Moyee

RESPONDENT

Date of Decision : 03-12-1948

Acts Referred:

Bengal Tenancy Act, 1885 — Section 156, 26F, 26F(10), 82
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1952 Cal 353

Hon'ble Judges : Sen, J

Bench : Single Bench

Advocate : Purna Chandra Basu, for the Appellant; Subodh Kumar Bhattacharjee, for Nalini Kumar Mukherjee, (in No. 728) and Siti Kanta Lahiri and Monohar Saha, (in No. 729), for the Respondent

Judgement

Sen, J.—This Rule has been obtained by an applicant for pre-emption u/s 26-F, Bengal Tenancy Act. The petitioner is a co-sharer of a transferor who has transferred a part of the holding to the opposite party. The petitioner applied "under Section 26-F for pre-emption & deposited the amount of consideration money mentioned in the notice provided for in Section 26-F together with compensation at the rate of ten per cent per annum. When the application came to be heard, the transferee alleged that after his transfer he had erected certain structures on the land & improved it & claimed compensation for such improvement. The petitioner objected to such claim. The learned Munsif has appointed a Commissioner to hold a local investigation & to report on the value of the structures & improvements made on the land. Against this order of local investigation the present Rule has been obtained by the petitioner.

2. It is argued on behalf of the petitioner that in proceedings u/s 2B-F the Court has got no Jurisdiction to award compensation to the transferee for any improvements made on the land after the transfer & his contention is that this order of the learned Munsif should be set aside.

3. On behalf of the transferee three contentions were raised. First, it is contended that the Munsif has jurisdiction u/s 26-F, Bengal Tenancy Act to allow compensation to the transferee for improvements effected by him & that therefore the order should not be interfered with. Secondly, it is contended that this order is an order passed u/s 26-F, Bengal Tenancy Act, & is appealable by reason of the provisions of Sub-Section (10) of Section 26-F & that consequently no application for revision u/s 115, Civ. P. C. would lie. Thirdly it was argued that the order being an interlocutory order, ordinarily the Court will not interfere with it on revision u/s 115, Civ. P. C. & that if the Court does exercise its revisional powers it will do so only when failure to exercise such power would result in irreparable injury & denial of justice.

4. I shall first take up for consideration the question whether the learned Munsif has jurisdiction u/s 26-F to make such an order. There is nothing in Section 26-F which empowers the Court to award compensation for improvements effected by, the transferee after his purchase. It was argued, however, on behalf of the transferee that under the general law the Court has the power to award compensation & in this connection the case of Ajay Kanta Poddar and Another Vs. Sushila Sundari Poddar and Others, was relied on. Henderson J. held in this case that although there was no provision in the statute for the reimbursement of the transferee for the money spent on improvement of the property since his purchase, "SUCH COMPENSATION MAY BE ALLOWED UNDER" "the ordinary law." I must say with great respect that I am not inclined to follow this decision & I shall give my reasons presently. At this stage I would only mention that there are two other decisions of this Court where a contrary view has been taken. I refer to the case of Kanto Mohan Mullick Vs. John Carapiet Galstaun and Another, which was decided by Rankin, C.J. It was a decision of a case u/s 26-P, Bengal Tenancy Act, as it stood at that time. So far as the present question is concerned there has been no change in the Act. The recent amendment does not effect any change in this regard & the wordings of both the sections are exactly the same as regards this point. It was held there that Section 26-P did not give the Court jurisdiction to award compensation to the transferee for improvements to the land. The same view was held in the case of the "Secretary of State v. Sukh Chand" 38 C. W. N. 849, which is a decision of M. C. Ghosh J. So far as the case law is concerned the weight of decisions lies in favour of the view propounded by the petitioner. It will be necessary now to examine the provisions of the section which are relevant to this matter. Section 26-P, Sub-Section (2) says that the application for pre-emption shall be dismissed unless the applicant at the time of making the application deposits in Court.

"the amount of the consideration money or the value of the transferred portion or share of the holding as stated in the said notice, together with compensation at the rate of ten per cent of such amount."

Nothing is said in Sub-Section (2) about depositing any money to compensate the transferee for improvements made by him. Sub-Section (3) says:

"If such deposit is made the Court shall give notice to the transferee to appear within such period as it may fix & to state what other sums he has paid in respect of rent or annulling encumbrances on the property since the date of the transfer. The Court shall then direct the applicant to deposit within such period as the Court thinks reasonable such amount as the transferee has paid on such account together with interest at the rate of six & a quarter per cent "per annum" with effect from the date on which the transferee made such payments. Here also nothing is said about depositing any sum for improvement to the land. It is quite clear from this section that it is not necessary for the applicant to make any other deposit except that which has been mentioned in Sub-Sections (2) & (3). Sub-Section (5) says that if the other requirements of the section have been complied with & if the deposit hereinbefore mentioned under Sub-Sections (2) & (3) has been paid, the Court shall allow the application for pre-emption. Here also nothing is said about compensation for improvements. On the contrary, a mandatory provision is made directing that the Court shall grant the application if the deposits mentioned above are made & if the other requirements of the section are complied with. My attention was drawn by the learned Advocate for the opposite party to the provisions of Sub-Section (8) of Section 26-P which is in the following terms:

"When a transferee is divested of his right, title & interest under the provisions of Sub-Section (7) he shall for the purposes of Clauses (a), (c) & (d) of Section 156 be deemed to be a ryot ejected from his holding by proceedings for his ejectment commencing on the date on which the application under Sub-Section (I) was made."

He next referred me to Sub-Sections (1) & (2) of Section 82, Bengal Tenancy Act, which are as follows:

"82 (1) Every raiyat or under-raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, & for which compensation has not already been paid.

"82 (2) Whenever a Court makes a decree or order for the ejectment of a raiyat or under raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat or under-raiyat for improvements & shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat & under-raiyat."

His argument is that if the transferee in a case u/s 26-P is deemed to be a raiyat ejected from his holding, the transferee should get the benefit of the provisions of Section 82 as regards compensation for improvements. This contention would have been sound, were it not for certain other words appearing in Sub-Section (8). If Sub-Section (8) had merely said that the transferee against whom an order for pre-emption is made is deemed to be a raiyat ejected from his holding, then I think that the provisions of Sub-Section (1) & (2) of Section 82, Bengal

Tenancy Act would be attracted & he would be entitled as an ejected raiyat to compensation for improvements made by him on the land from which he is being ejected. But Sub-Section (8) says that he shall be deemed to be a raiyat ejected from his holding for the purposes of Clauses (a), (c) & (d) of Section 156 & says nothing of Section 82.

5. Now, Clauses (a), (c) & (d) of Section 156 have nothing whatsoever to do with compensation for improvements but they deal with what is to happen regarding standing crops & other matters. The argument of the learned Advocate for the opposite party is that although the provisions of Sub-Section (8) do not expressly mention Section 82, never-the-less, the fact that the section puts the transferee in the position of a raiyat ejected from his holding indicates that he should be so treated for all purposes including the purposes of Section 82 Bengal Tenancy Act. In my opinion this argument is entirely wrong. The fact that Sub-Section (8) expressly stipulates that the transferee shall be deemed to be a raiyat ejected from his holding for the purposes of Clauses (a), (c) & (d) of Section 156 shows that he shall not be so deemed for any other purpose. In this connection I would rely upon the well-known rule of construction of statutes embodied in the maxim "Expression unius est exclusio alterius", the express mention of one thing implies the exclusion of another. This rule is applicable not only to written instruments but is specially applicable to the interpretation of statutes. As has been remarked in Broome's Legal Maxims, Edn. 10, p. 452 the maxim "Expressio unius est exclusio alterius" was never more applicable than when applied to the interpretation of a statute. It seems to me but logical & consistent with common sense to hold that where it is said that the transferee shall be deemed to be a raiyat ejected from his holding for a particular purpose, he cannot be deemed to be a raiyat who has been ejected from his holding for other purposes as well. For this reason I am of opinion that Section 26-F excludes the attraction of Section 82, Bengal Tenancy Act. I hold therefore that the learned Munsif had no Jurisdiction to direct an enquiry into the value of the improvements, if any, made by the transferee after his purchase. The order of the learned Munsif is without jurisdiction.

6. The next question which arises is whether an application u/s 115, Civ. P. C. lies against such an order. As I have stated before, one of the arguments on behalf of the opposite party was that this is an order passed u/s 26-F, Bengal Tenancy Act & being appealable by reason of the provisions of Sub-Section (10) of Section 26-P, no revision lies. If the order were appealable there can be no doubt that an application for revision would not lie. But Sub-Section (10) does not make an order appealable at all. Sub-Section; (10) says that an appeal shall lie to the ordinary civil appellate Court from any order of a Court under this section. The present order is not one under the section at all. The section does not provide for such order. Had the wording of Sub-Section (10) been that an appeal shall lie from any order of a Court made on an application under the section then perhaps it could be argued that the order was appealable, but the words are "any order of a Court under this section." Any & every order made

upon an application for pre-emption is not necessarily an order u/s 26-P; only such orders as are provided for under the section are appealable. Where the section does not provide for the making of such order it is not appealable. I hold therefore that it cannot be said that no application for revision lies on the ground that this order is appealable.

7. The next argument is that as the order is an interlocutory order and as it can be objected to in an appeal from the whole proceedings, no application for revision would lie. There is a conflict of decisions in the different High Courts on this point. But this Court has held in a large number of cases that an appeal (a revision?) does lie from an interlocutory order although such an interlocutory order may be attacked in an appeal from the final order passed in the proceeding. There are a very large number of cases of this Court supporting this view. They are to be found collected in "Mulla's treatise", on the Civ. P. C. where he deals with the provisions of Section 115 under the heading "Interlocutory Orders." I need mention only two cases where this view has been held. In this connection I would refer to the case of "Khirode Chandra v. Saroda Prosad" 7 I C 436. It was held that this Court had ample jurisdiction to set aside interlocutory orders passed by subordinate Courts. The same view was taken by one of the Judges namely Page, J. in the case of "Salam Chand v. Bhagwan Das" 53 Cal. 767 & in the case of "Indubala Dassi v. Lakshmi Narayan" 38 C. W. N. 1146. The view mentioned above was accepted by this Court. It cannot be doubted that the learned Judges of this Court have taken the view that interlocutory orders may be revised u/s 115, Civ. P. C. The learned Advocate for the opposite party next argues that even if it be conceded that an application u/s 115 lies with respect to interlocutory orders, nevertheless, such application should not be entertained except to prevent irreparable injury & denial of justice. For this proposition he relies upon the observations of Nasim Ali J. in the case mentioned above "Indubala Dassi v. Lakshmi Narayan" 38 C. W. N. 1146 & the observations of Page J., in the case of "Salam Chand v. Bhagwan Das" 53 Cal. 767, where it is said that although the Court has jurisdiction to exercise its revisional power with respect to interlocutory orders It will be exercised only when irremediable injury will be done & a miscarriage of justice will inevitably ensure if the Court hold its hand. I may mention in passing that at p. 774 there is a collection of the cases decided by this Court in which it has been held that interlocutory orders are subject to revision. In my opinion in the present case if the local investigation is allowed to continue it will certainly cause irremediable injury to the petitioner. The petitioner will be delayed from getting the property for which he has applied. He will have to incur costs for the local investigation & the costs of a possible appeal. It is well known that the costs awarded by a Court do not necessarily cover the actual costs incurred. Further, the petitioner will be kept out of his property for a very long period.

8. In these circumstances I am of opinion that this Court should exercise its discretion u/s 115, Civ. P. C. & set aside the order of the learned Munsif. The Rule is made absolute with costs. The order of the learned Munsif directing, a local

investigation is set aside & he is directed to proceed with the case in accordance with law & in the light of the observations made above.

9. Civil Revision No. 729. This Rule has been heard together with the previous Rule & the same-question arises. The order regarding this Rule is that it is made absolute with costs & the order of the learned Munsif appointing a Commissioner for investigating the Value of the improvements-effected by the transferee is set aside. The Munsil shall proceed with the case in accordance with law & in the light of the observations made above.

10. Let the affidavit in reply by the petitioner in Court to-day be kept on the record.