
(1942) 03 CAL CK 0036
In the Calcutta High Court

Mt. Shamsunnessa Khatun Choudhurani	APPELLANT
Vs	
Romjan Sheikh and Another	RESPONDENT

Date of Decision : 05-03-1942

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1942 Cal 428

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—The question raised in this; a appeal is whether the appeal in the District Court was competent. The Munsif made an order u/s 4, Bengal Non-Agricultural Tenancy Act. The decree-holder appealed and his appeal has been dismissed as incompetent. The learned Subordinate Judge rightly held that the competency of the appeal would depend upon whether the matter was one within Section 47, Civil P.C. He came to the conclusion that it was not. I do not propose to set out the terms of Section 4 in full. Suffice it to say that it gives relief to persons who have been ejected between 30th January 1940 and the dates of the commencement of the Act. The respondents were ejected by the appellant between those two dates in execution of a decree. There is no question that the present dispute is between the parties to the suit. By the decree the appellant is entitled to eject the respondents. The result of this application is that the decree remains unexecuted. I should have thought it was beyond controversy that this question relates to the execution of the decree. I have no doubt that if, when this Act comes to an end, the appellant attempted to recover possession by a suit, she would be met with the objection that the suit was barred by Section 47 of the Code.

2. The further question remains whether the order made by the Munsif amounts to a decree within the meaning of Section 2, Civil P.C. On this point the judgment of my learned brother Nasim Ali in Nafar Chandra Sardar and Others Vs. Kali Pada Das, is very much to the point. The learned Judge makes it quite clear that

the mere fact that the respondents' right to remain in possession might terminate within a certain period will not prevent the decision from amounting to a decree. The point at issue between the parties is whether the respondents are entitled to the benefits of this Act at all. That question has been conclusively and finally determined by the order of the learned Munsif in this case. The appeal is, accordingly allowed, the order of the lower Appellate Court is set aside and I direct that the appeal be reheard by some other Court to be appointed by the District Judge. Costs in this Court will be costs in the appeal - hearing fee, one Gold Mohur. The application is rejected.