
(1982) 02 CAL CK 0040
In the Calcutta High Court
Case No : C.R. No"s. 258 and 259 of 1980

Paresh Nath Mondal	Vs	APPELLANT
Bijan Behari Mondal and Others		RESPONDENT

Date of Decision : 26-02-1982

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 22
Civil Procedure Code, 1908 (CPC) — Section 24
West Bengal Land Reforms Act, 1955 — Section 9(6)

Citation : AIR 1982 Cal 285 : 86 CWN 491 : 86 CWN 490

Hon'ble Judges : B.C. Chakrabarti, J; Anil Kumar Sen, J

Bench : Division Bench

Advocate : Jahar Lal De, for the Appellant; G.C. Pal, for the Respondent

Final Decision : Allowed

Judgement

Anil K. Sen, J.—These are the two revisional applications at the instance of one Paresh Nath Mondal who filed an application u/s 8 of the West Bengal Land Reforms Act against the opposite party being Misc. Case No. 40 of 1974 for pre-empting a sale by a co-sharer in favour of the opposite party. The opposite party in his turn instituted a counter proceeding under the same provision being Misc. Case No. 11 of 1975-The learned Munsif allowed the petition filed by the petitioner Paresh Nath Mondal but dismissed the counter petition filed by the opposite party by two separate orders both dated June 26, 1976. The opposite party preferred two appeals being Misc. Appeal No. 78 of 1076 (arising out of Misc. Case No, 40 of 1974) and Misc. Appeal No. 79 of 1976 (arising out of Misc. Case No. 11 of 1975). Both the appeals having been transferred by the learned "District Judge to the court of the learned Subordinate Judge, the learned Subordinate Judge by two independent orders both dated Sept. 4, 1976 allowed both the appeals and reversed the decision of the learned Munsif. Feeling aggrieved the petitioner Paresh Nath Mondal has moved this court with two revisional applications on which the above two Rules had been issued. Mr. De, learned Advocate appearing on behalf of the preemptee petitioner, has raised a

short point that the appeals which lay to the learned District Judge would not have been lawfully transferred to the court of the learned Subordinate Judge since the learned Subordinate Judge had no jurisdiction to entertain or hear and dispose of the appeals. According to Mr. De, u/s 9(6) of the West Bengal Land Reforms Act an appeal lies to the District Judge not as a Court but as a persona designata and hence he could not have transferred the appeal to the court of the learned Subordinate Judge for hearing. Mr. De has next contended that even if it be not held that the District Judge is a persona designate, yet the jurisdiction conferred being a special one, it was for him to exercise it and he cannot transfer the appeal to the court of the learned Subordinate Judge. Mr. pal, appearing on behalf of the pre-emptor opposite party, has contested both the points thus raised by Mr. De. According to Mr. Pal. Section 9(6) has extended the jurisdiction of the principal civil court of the District to hear the appeals from orders of pre-emption made u/s 9(1) read with Section 8 of the West Bengal Land Reforms Act and such appeals, as appeals from orders and decrees of a munsif, could be transferred for disposal to the court of the learned. Subordinate Judge; it could be so transferred, according to Mr. Pal, under either of the provisions of Section 22 of the Bengal, Agra and Assam Civil Courts Act. 1887 or 24 of the Civil P, C.

2. The points raised require careful consideration. It would be necessary first of all to refer to the statutory provisions providing for the right of appeal, its forum and the procedure for disposal of such an appeal. An application u/s 8 of the Land Reforms Act claiming pre-emption is to be disposed of by the learned Munsif in terms of Section 9(1) of the Act Sub-section (6) of Section 9 provides "any person aggrieved by an order of the Munsif under this section may appeal to the District Judge having jurisdiction over the area in which the land is situated, within thirty days, from the date of such order and the District Judge shall send a copy of his order to the Munsif. The fees to be paid by the parties and the procedure to be followed by the District Judge shall be such as may be prescribed."

3. Rule 8 of the Rules framed under the Act prescribes the procedure for appeals and fees to be paid under Sub-section (6) of Section 9 and the said provision is set out hereunder:

"8. (1) Every appeal under Sub-section (6) of Section 9 shall be filed in the form of a memorandum and shall be signed and verified by the appellant in the manner provided in Sub-rules (2) and (3) of Rule 15 of Order VI of Schedule 1 to the Civil P. C. 1908. It shall be accompanied by an authenticated copy of the order appealed against and shall contain the following particulars namely:--

(a) the name and address of the appellant

(b) the name and address of the respondent;

(c) the location and particulars of the holding in respect of which orders were passed by the Revenue Officer, and

(d) the grounds of appeal.

(2) The Court-fees payable on the memorandum of appeal shall be such as are provided in Sub-clause (ii) of Clause (a) of Article 11 of Sch. II to the Court-fees Act, 1870 and shall be collected in the same manner as laid down in, that Act.

(3) On the filing of an appeal, the Appellate Officer shall call for the records of the case from the officer or authority against whose order the appeal has been filed and after giving the appellant and the respondent an opportunity of being heard shall dispose of the appeal.

(4) A process fee of rupees three per party on whom a notice is to be served shall be paid along with the memorandum of appeal."

4. On the statutory provisions as aforesaid we are to consider the two objections raised by Mr. De. Though a decision of a learned single Judge of this court supports the first objection raised by Mr. De it appears to us that the view expressed by the learned single Judge is not approved by two subsequent Bench decisions of this court. Following the decision of the Supreme Court in the case of *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, , this court in the cases of *Prosonna Kumar Giri v. Gangadhar Raut*, (1977) 81 CWN 580 and *Kalidas Nath v Obedullah Sheikh*, (1977) 81 CWN 866 held that Section 9(6) of the West Bengal Land Reforms Act when it speaks of District Judge it really means the court of the District Judge or the principal Civil Court of the District, It had been further held that both the Bengal. Agra and Assam Civil Courts Act and the Civil P. C. are applicable to proceedings contemplated by that provision before the District Judge. Having regard to the statutory provisions we are not inclined to differ from the view so expressed which is otherwise binding on us. This negates the first objection raised by Mr. De to the effect that the learned District Judge in entertaining an appeal u/s 9(6) of the Act acts as a *persona designata* and as such none but he alone could hear and dispose of the appeal.

5. Although the first objection raised by Mr. De stands overruled for reasons given hereinbefore, the question still remains as to whether the learned District Judge could have transferred the appeal to the court of the learned Sub-ordinate Judge for hearing and disposal. Mr. Pal, as we have indicated hereinbefore, relies upon the provisions of Section 24 of the Civil P. C. and Section 23 of the Bengal, Agra and Assam Civil Courts Act and contends that the appeal being one to the court of the District Judge is to be regulated by the normal practice and procedure of such a court as prescribed by law. But in our view, neither of the provisions relied on by Mr. Pal can be invoked to support an order of transfer of such an appeal to the court of the learned Subordinate Judge. In order to attract the provisions of Section 24(1)(a) of the Code in aid of an order of transfer to the court of the learned Subordinate Judge, it has to be first established that the court of the learned Subordinate Judge is otherwise competent to hear and dispose of the appeal. Unless the court of the learned Subordinate Judge is otherwise a court competent to hear and dispose of such an appeal the learned

District Judge cannot transfer the appeal to the said court for hearing and disposal in exercise of his powers under the said provision. Section 9 of the West Bengal Land Reforms Ad not only confers the right of appeal but also fixes the forum, namely the court of the District Judge which in view of the provision of Section 8(2) of the Bengal. Agra and Assam Civil Courts Act may include on assignment the court of the Additional District Judge appointed for the District, But the position of the Subordinate Judge is materially different. Section 24 of the Civil P. C. can be attracted only if Section 22 of the Bengal, Agra and Assam Civil Courts Act can be invoked to confer upon the learned Subordinate Judge the jurisdiction to hear and dispose of such an appeal preferred u/s 9(6) of the West Bengal Land Reforms Act. Section 22 of the Bengal. Agra and Assam Civil Courts Act, however, cannot be invoked. Section 22 must be read along with and in the light of Section 21 of that Act. When Section 22 speaks of "appeals pending before him from the decrees or orders of Munsifs, it obviously refers to appeals the forum of which is prescribed by Section 21(2) of the Bengal, Agra and Assam Civil Courts Act. It has now been clearly held by a Special Bench of this court in the case of Union of India (UOI) Vs. Manmul Jain, that Section 21 of the Bengal, Agra and Assam Civil Courts Act when it speaks of orders, it means orders passed in suits or proceedings arising out of suits. Such being the position, the order appealed against in the present case though passed by a Munsif is not an order coming within the scope of Section 21(2) or Section 22 of that Act because it is not an order passed in a suit or a proceeding arising out of a suit. Moreover, we have pointed out hereinbefore that the statute itself has prescribed the forum to be the court of the District Judge and has neither left the forum to be determined by the Bengal, Agra and Assam Civil Courts Act nor has it given any indication that the District Judge in dealing with such an appeal can transfer the appeal to any other court subordinate to the District Judge. In such a situation it would not be permissible for us to hold that the learned District Judge could transfer the appeal as done in the present case to the court of the learned Subordinate Judge or that the learned Subordinate Judge was competent to hear and dispose of such an appeal. In this view we must uphold the objection of Mr. De that the appeal preferred to the learned District Judge could not have been competently transferred to the court of the learned Subordinate Judge when that court had not the jurisdiction to either entertain or hear and dispose of the appeal.

6. In the result, the revisional applications succeed and the Rules are made absolute. The impugned orders passed by the learned Subordinate Judge in two Misc. Appeals referred to hereinbefore being set aside the appeals are remanded for rehearing by the competent court in accordance with law.

7. The parties will bear their respective costs.

8. Let the records be sent down forthwith.

B. C. Chakrabarti, J.

9. I agree.