
(1967) 05 CAL CK 0014
In the Calcutta High Court
Case No : Civil Rule No. 3029 of 1966

Peary Debi

APPELLANT

Vs

Dakhineswar Samanta

RESPONDENT

Date of Decision : 24-05-1967

Acts Referred:

Calcutta Thika Tenancy Act, 1949 — Section 5, 6
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Article 171, 172, 176

Citation : (1967) 2 ILR (Cal) 75

Hon'ble Judges : Chatterjee, J

Bench : Single Bench

Advocate : Sudhir Kumar Dutt, for the Appellant; Hariprasanna Mukherjee and Nirmal Kumar Ghosal, for the Respondent

Judgement

Chatterjee, J.—This is an application under Article 227 of the Constitution of India against an order of the appellate authority whereby the authority dismissed the appeal. The appeal to the appellate authority was against an order by which the Court adjourned the matter for considering the question of substitution on the basis of a nadabi, i.e. on a deed declaring that the executant had no interest in the property. The order itself is no final order and it did not affect the rights of the parties in any way. Therefore, that order was not appealable. But the substantial question in this matter is whether there is any abatement of any proceeding u/s 5 of the Calcutta Thika Tenancy Act and if there be any abatement, whether there is any time limited by law during which the abatement should be set aside or the right would be lost.

2. An order was obtained against the Petitioner, a thika tenant, for ejectment. While that matter was continuing and was pending in the trial Court for execution, the person, in whose favour the order was made, died and thereafter, an application was made at least 90 days after the death for bringing the heirs on record on two-fold grounds, the first ground being that the heirs inherited the right of the last holder to execute the order of the Controller for eviction and it is

urged, in the second instance, that though the order was passed in favour of one Surj Bala Devi, the real owner of the property was Dakshineswar Samanta and therefore, he should have been allowed to execute the said order for eviction. That matter was considered. The two matters stand on two different footings. So far as the heirs are concerned, they inherited the right to execute the order. The right to execute an order and take possession of the property is itself property and therefore, it is heritable.

3. The next question is that if the person who inherited such right would be debarred from proceeding with the execution, if they did not come within any time limited by law. The Calcutta Thika Tenancy Act makes no provision for time within which such a person should apply for proceeding with execution. If a proceeding is started by or against a person and if that person dies, that dead person cannot further proceed in the matter; hence it abates so far as that person is concerned and if there is any such abatement there is no time of limitation to bring the heirs on record either under the Indian Limitation Act or otherwise. Article 176 and Article 172 or Article 171 refer to the CPC only.

4. When a Legislature provides for the formation of a Tribunal, it is for the Legislature to determine what power should be given to such Tribunal. It is for the Legislature to determine as to what procedure should be followed by that Tribunal. The Legislature may itself so determine the same or provide that the procedure may be determined by some other authority. But if there is no express provision relating to any matter of procedure, in that case the ordinary rule is that the Tribunal will follow its own procedure or, in other words, the Tribunal will exercise its inherent power. Therefore, if there is a right to execute a decree and if there is no time limited by law within which such heirs will apply for execution, the Tribunal will determine, on its own inherent power, as to whether the case is one in which the person who wants to proceed should be granted leave to proceed or not. In the circumstances of one case the Tribunal may refuse such leave in another case the Tribunal may grant such leave. This is exactly the position with reference to the case under consideration. There is no provision in the Calcutta Thika Tenancy Act as to what will happen if a person dies. There are various other rules regarding various matters but there is nothing in the rules framed under the Calcutta Thika Tenancy Act as to the time within which the heirs would be substituted. Hence, this matter has been left to the inherent power of the Tribunal. The Tribunal in the circumstances of this case has found that the application should be allowed for reasons, stated by it. I do not think I can interfere with such orders unless under very exceptional circumstances.

5. Another point of view from which the matter has been considered, is whether the real owner can proceed to execute the order after the death of the benamdar in whose name the order was passed. With reference to such matters, the law is settled that if the order is made in favour of a benamdar or against a benamdar, it will be deemed to be an order in favour of the real owner or against the real owner, as the case may be. In that view of the matter, even though on the record

the name of Sm. Surj Bala was there, it will be deemed as if the real owner had already been on the record wearing a mask and therefore, the death of the mask matters little and therefore, the real owner can proceed with the execution and as there is no time limit for bringing the real owner on the record, there would equally be no question of limitation and the Tribunal will exercise its inherent powers.

6. In this view of the matter, the rule is discharged.

7. There will be no order for costs.

8. Mr. Dutt further urges that as another person has now appeared on the record, he is entitled to another order u/s 6 of the Calcutta Thika Tenancy Act in favour of the other person or persons who have now appeared on the record and who now want to execute that order. There is no necessity of expressing any opinion on that matter at this stage as the present revision is not against such an order, I express no opinion on the merits of that matter.