

(1948) 03 CAL CK 0007

In the Calcutta High Court

Case No : Civil Revision Case No. 120 of 1948

Rajendra Nath Bose Choudhury and Others

APPELLANT

Vs

Subodh Gopal Bose Choudhury and Others

RESPONDENT

Date of Decision : 05-03-1948

Acts Referred:

Citation : (1948) 03 CAL CK 0007

Judgement

Mukherjea, J.—Mr. Dutt who appears in support of the Rule has argued before us that the decision in *Sri Kant a Kamar v. Atul Krishna Biswas* 49 C. W. N. 143 (1941) upon which the learned District judge relied would not apply to the facts of this case. It is perfectly true, he says, that when an application before a Debt Settlement Board is made for settlement of debts, it is necessary that the applicant must admit his liability for some debt. If he denies liability for any debt at all, the petition would not be entertainable by the Debt Settlement Board, inasmuch as the existence of the debt is sine qua non for assumption of jurisdiction by the Debt Settlement Board. Mr. Dutt argues, however, that this principle would not apply to a usufructuary mortgagor who is entitled to go to the Debt Settlement Board and ask them to take an account and direct the mortgagee to deliver possession to him, if it is found that the mortgage has been repaid by the usufruct. In support of this contention, he relies upon the decision of his Lordship the Chief justice in *Golapjan Bibi v. Sk. Sarif Ahmed* 63 C. W. N. 103 (1917). We do not think that it would be necessary to consider whether the decision of his Lordship the Chief justice is a sound one, and whether, in fact, a distinction could be made regarding the application of the principle enunciated in *Sri Kanta Kamar v. Atul Krishna Biswas* 49 C. W. N. 143 (1941) when the debt is one due on a usufructuary mortgage. Of course, if the debtor claims account merely and expresses an opinion that on proper accounts being taken, there might be no debt whatsoever, we do not deny that the Debt Settlement Board would have jurisdiction to entertain the application, but when he is positive in his assertion that nothing is due, no matter whether the debt was based on a usufructuary mortgage or not, it is doubtful whether the Debt Settlement Board

would have jurisdiction to settle the debt. We do not think that it would be necessary to consider this point in the present case. So far as the Opposite Party No. 1, Subodh Gopal Basu Choudhury, is concerned, the Petitioner did file an application before the District Judge praying that his name might be expunged. As the District Judge was going to set aside the entire proceeding, he did not think it necessary to make a specific order on the petition. The petition is on the record, and we can pass an order on it and direct that the name of Subodh Gopal Basu Choudhury be struck out from the proceeding. As a matter of fact, he is not a mortgagee at all, but is in the position of a girbidar under sec. 171 of the Bengal Tenancy Act. Regarding Opposite Party No. 2, Phani Bhusan Chowdhury, we have seen the document. It is not a mortgage in any shape or form, but purports to be an out-and-out sale. There could be no question of any relationship of debtor and creditor existing between the Petitioner and the Opposite Party No. 2. The application cannot, therefore, proceed against him. As regards Opposite Party No. 3, Hiralal Chattapadhyaya, it may be, as the Petitioner says, that he is a usufructuary mortgagee and if the Petitioner is willing to amend his petition before the Debt Settlement Board and make a suitable statement saying that he only prays for accounts and is not sure whether the debt has been paid or not, we think that the application can be proceeded with.

2. The Rule is disposed of as indicated above. We make no order as to costs in this Court.

G.N. Das, J.

I agree.