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**(1977) 05 CAL CK 0004**  
**In the Calcutta High Court**  
**Case No : S.A. No. 2485 of 1965**

Rati Kanta Mosat

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision : 17-05-1977**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 80

West Bengal Estates Acquisition Act, 1953 — Section 44(2a), 52, 6, 6(1)(d)

**Citation : 81 CWN 783**

**Hon'ble Judges : S.K. Datta, J**

**Bench : Single Bench**

**Advocate : S.C. Dasgupta and Sankar Mukherjee, for the Appellant; Tarun Chatterjee for Sibdas Ghosal for Respondents. Nos. 4 and 5, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S.K. Datta, J.—This appeal is by the plaintiff against the judgment of affirmance. The plaintiff instituted a suit on the allegation that one Molla Moshuddin was a tenure-holder of the suit lands. He died leaving his father, Abu Taib, his widow and two daughters, defendants 4 and 5. Thereafter, the widow died. Abu Taib got the suit lands and after possessing them for more than 12 years in exclusive title sold the suit lands to the plaintiff by registered kobala dated 28.3.56. In the revisional settlement record, the settlement authorities refused to record the lands in the plaintiff's possession and as the Government was trying to disturb plaintiff's possession, the suit was instituted for a declaration of the plaintiff's title and also for an injunction restraining the State Government from disturbing his possession. It was further stated that an application for revision of the settlement record was made by the plaintiff u/s 44(2a) of the West Bengal Estates Acquisition Act but the same was rejected and thereafter the present suit was instituted claiming the aforesaid reliefs upon due service of notice u/s 80 of the Code of Civil Procedure. The suit was contested by the State of West Bengal, the defendant no. 1 who submitted, inter alia, that the vendor of the plaintiff had no title to the properties on the date of sale as they had already vested in the

State previously. The story of adverse possession for more than 12 years was also disputed. A written statement was also filed on behalf of the defendant nos. 4 and 5, the daughters of Moshuddin, wherein it was stated that they inherited the properties and Abu Taib had no interests in the properties.

2. The suit was tried on evidence and both the courts below proceeded on the admitted position that Abu Taib's interest in the suit lands was that of a permanent tenure holder. The learned Munsif found on the evidence of the court's witnesses that Abu Taib did in fact file a return in Form "B" and the suit plots were not retained and no return was filed in respect thereof. The learned Munsif, accordingly, concluded that Abu Taib had no intention to retain nor did he ever retain the plots u/s 6(1) (d) of the West Bengal Estates Acquisition Act and, as such, the suit lands vested in the State of West Bengal since 1st Baisak, 1362 B.S. In this state of affairs, the plaintiff did not purchase any interest on the basis of his sale deed.

3. On appeal, the findings of the learned Munsif were affirmed. The present appeal is against this decision.

4. Mr. Dasgupta appearing for the appellant strongly contended that the courts below went wrong on facts inasmuch as they held that Abu Taib did actually file a return but the suit lands were not included therein. He drew my attention to certain correspondence on record which are exhibits in the suit. It would appear therefrom that no return was, in fact, filed by the vendor of the plaintiff in respect of the suit lands as was assumed wrongly by the courts below. He further submitted that as no return was filed, the plaintiff filed a return for retention of those lands well before the statutory period i.e., 30th day of April, 1958, under rule 4A of the West. Bengal Estates.Acquisition Rules. In that view of the matter, the courts below should have held that the plaintiff acquired valid title to the suit lands by the impugned purchase and the said lands did not vest in State.

5. In respect of the contention that the plaintiff was entitled to retain those lands on the basis of his return, it is to be observed that the right of retention has been only given to the intermediary or persons deemed to be so. It is not provided in the statute, as it was not possible to do so, that a transferee from the intermediary on purchase of lands after the vesting would be entitled to file a return in respect of such lands which may not have been retained by the intermediary on the date of vesting. As is well known, on the date of vesting, an intermediary interest in the land vested in the State subject only to the right of retention by the intermediary under the provisions of section 6; it cannot be construed that such right was also available to his transferee after the date of vesting, as in the absence of retention by the intermediary such lands remained vested in the State since the date of vesting without any scope for its retention by the intermediary. I am, therefore, of opinion that the mere fact that the plaintiff filed a return in respect of the suit lands for retention of the lands did not entitle him to a declaration of title to those lands only on the basis of such retention by him.

6. In regard to the second aspect, it is to be noted that an intermediary who is entitled to retain possession under Sub-section (1) of Section 6. is required to file a return to the appropriate authority on or before the expiry of 30th day of April, 1958. This is provided in rule 4A of the West Bengal Estates Acquisition Rules. Under the proviso to the said Rule, it is laid down that a raiyat or an under-raiyat who is to be deemed an intermediary u/s 52 and holds land which does not exceed the ceiling laid down under clause (c) or clause (d) of subsection (1) of Section 6 of the Act, will not be required to exercise such choice. This provision does not extend to the intermediaries. Even assuming such opportunity was also available to an intermediary, it can only be done in cases where the lands held by him did not exceed the ceiling. In the case before me, no attempt was made to establish that the plaintiffs vendor held the lands below the ceiling and the plaintiff being the suitor was responsible for the carriage of proceeding and the burden of proof entirely lay on the plaintiff to establish that his vendor did not hold land in excess of the ceiling, assuming that the proviso applies to an intermediary. There being no such evidence, it is not possible to hold that the plaintiff's vendor, the admitted intermediary, was rightfully entitled to retain the land which, on such valid retention, could only clothe the plaintiff with title in respect of the suit lands. That was, however, unfortunately not the position in so far as the plaintiff is concerned. In these premises, there is no merit in this appeal which, accordingly, must be dismissed, for reasons other than those on which the judgments of the courts below were based. The appeal is, accordingly, dismissed. There will be no order as to costs.

Let it be recorded that the State of West Bengal has not contested the appeal before me.