(1939) 11 CAL CK 0008

In the Calcutta High Court

Sarat Chandra Chakraburty APPELLANT

Vs

Sashi Bhusan Manna and Others RESPONDENT

Date of Decision : 28-11-1939

Acts Referred:
Bengal Tenancy Act, 1885 — Section 26G
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1940 Cal 111

Hon'ble Judges : Nasim Ali, J;Narsing Rau, J

Bench : Full Bench

Judgement

Nasim Ali, J.—The orders complained of in these two rules are the orders of a Revenue Officer u/s 26-G, Ben. Ten. Act. That Section empowers a Court as well as a Revenue Officer to entertain applications. A Revenue Officer on the plain language of the statute is not therefore a Court. A Revenue Officer is not subject to the appellate jurisdiction of this Court. The mere fact that his order might have the effect of a decree of Civil Court does not make him a Court, far less a Court subordinate to the High Court within the meaning of Section 115, Civil P.C. Further I am not satisfied that the decision of the Revenue Officer in these two cases is wrong on the merits. I therefore discharge both the rules. There will be no order as to costs in these two rules.

Narsing Rau, J.

2. The main question arising in these rules is whether an order made by a Revenue Officer u/s 26-G(6), Ben. Ten. Act, can be revised by the High Court u/s 115, Civil P.C. This depends upon the precise implications of the words "such order shall have the effect of a decree of a Civil Court" occurring at the end of the sub-section. What the effect of a decree of a Civil Court is, is not stated in the Bengal Tenancy Act itself but is to be gathered from the Code of Civil Procedure. But there are two initial difficulties : first, the decrees dealt with in the Code are adjudications in suits, and secondly, if they are to have any effect under the Code they must be decrees passed by a Court of Civil judicature within

the meaning of the Code. If therefore we are to give any meaning to the words in question, we must hold that, besides what they expressly state, they necessarily imply (1) that a proceeding u/s 26-G shall be deemed to be a suit and (2) that a Revenue Officer making an order under the Section shall be deemed to be a Civil Court within the meaning of the Code of Civil Procedure. If we make these two assumptions, but not otherwise, it is possible to give the words some meaning: Rule g. the provisions of the CPC regarding execution may then become applicable to the Revenue Officer''s order. "Whether the Legislature intended anything more it is not possible to say.

3. But even with the above assumptions we cannot say that the Revenue Officer when acting under the Section is a Court subordinate to the High Court, with the result that his order cannot be said to be subject to revision by the High Court u/s 115, Civil P.C. I therefore agree that the rules should be discharged, although the resulting position can hardly be regarded as satisfactory. Section 26-G is a provision which extinguishes without compensation certain private rights. Orders thereunder, if made by a Civil Court, are subject to the High Court''s control. But it would seem that similar orders, if made by a Revenue Officer are, as the law stands at present, subject neither to appeal nor to revision in any quarter.