

(1941) 01 CAL CK 0029

In the Calcutta High Court

Case No : Appeal from Appellate Order No. 28 of 1940

Shaikh Karam Newaj and Others

APPELLANT

Vs

Nittyamoyee Dassya and Another

RESPONDENT

Date of Decision : 15-01-1941

Acts Referred:

Citation : (1941) 01 CAL CK 0029

Final Decision : Dismissed

Judgement

Henderson, J.—The first question that arises with regard to this appeal is whether it is competent. The Appellants applied to the Munsif for an order under sec. 26G, sub-sec. (5) of the Bengal Tenancy Act. That application was rejected. They then appealed to the District Judge. He dismissed the appeal as incompetent. They then appealed to this Court. Now, it is not disputed that the appeal was incompetent when it was filed. In that view it should have been summarily dismissed. It is, however, contended that it has since become competent in view of the provisions of Act XVIII of 1940. By that Act, sub-sec. (7) has been inserted which provides as follows:

Any order made by a Court under sub sec. (6), shall have the effect of a decree of a Civil Court subject to the provisions of the CPC in respect of an appeal, revision or review.

2. It is now suggested that that section has the effect of making competent appeals which were incompetent when they were filed. There is nothing to suggest that the new section has such retrospective effect and it would be absurd if it had. It does not explain what the law was before. It widens the scope of sec. 26G altogether and makes it apply to mortgages to which it formerly did not apply. It is a totally different thing. It is not a mere amendment of the law regarding usufructuary mortgages.

3. There is an alternative application in revision. It is, however, not necessary to interfere because the Petitioners have another remedy. The result is that the

appeal is dismissed and the application is rejected. In the circumstances of the case I make no order as to costs.