

**(2001) 09 CAL CK 0048**  
**In the Calcutta High Court**  
**Case No : S.A. No. 461 of 1989**

Sri Guru Prasad Dutta and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

**Date of Decision :** 25-09-2001

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, 100  
West Bengal Land Reforms Act, 1955 — Section 14, 14X

**Citation :** (2002) 2 CALLT 37 : (2002) 2 CHN 486

**Hon'ble Judges :** Jyotosh Banerjee, J

**Bench :** Single Bench

**Advocate :** B. Banerjee and Amal Kr. Saha, for the Appellant;

**Final Decision :** Dismissed

## **Judgement**

J. Banerjee, J.—The present second appeal is directed against the Judgment and decree, by which the learned first appellate Court allowed

the appeal and set aside the Judgment and decree passed by the trial Court and judgment was passed on 23.12.1988 by the Assistant District

Judge, Addl. Court, Burdwan in T.A. 5/88.

2. In a nutshell, the facts and circumstances leading to the present second appeal are as hereunder:--

The plaintiffs/appellants brought a suit alleging, inter alia, that the suit property originally belonged to Raj Ballav Dutta. Raj Ballav Dutta had also

big debottar estate and he had three sons, namely, Hari Prosad Dutta, Radhika Prosad Dutta and Bishnuprasad Dutta. At the time of death of Raj

Ballav, Bishnuprasad, the father of the plaintiff was minor and the other two brothers Radhika Prasad and Hari Prasad used to look after the

Debottar Estate. According to the allegation they committed various acts of

mismanagement in respect of debottar estate and Incurred a heavy loan by mortgaging debottar estate. In this background, Bishnuprasad with a view to protecting the secular property from the clutches of the creditors, executed a deed of gift in respect of the suit property and in this way created a benami in respect of such property in the name of his wife. But it is also alleged that donee never accepted the said gift nor did she ever possess the gifted land as a donee. In fact it is the allegation of the plaintiffs that the said deed of gift was never acted upon. On the other hand, one of the plaintiffs started a partition suit, in which wife of Bishnu Prasad, Kashiswari was a party and the same ended in a compromise decree each co-sharers getting separate allotment of their own share. It is further alleged that State of West Bengal started a proceeding under the provisions of the West Bengal Land Reforms Act against the apparent owner Kashiswari and treating all the properties Including the suit properties to be of Kashiswari alone, allowed her to possess only 6.18 acres of land considering her to be one unit and declared the excess land as vested to the State. On the basis of the said order, the local Tahasildar threatened the plaintiffs with dispossession. In that background, the plaintiffs had to file the suit. Defendant, State of West Bengal contested the suit on a written statement contending, inter alia, that the present suit is barred u/s 14X of West Bengal Land Reforms Act and denied the allegation that the deed of gift in favour of Kashiswari was mere a paper transaction and the same was never acted upon and that the said Kashiswari on the basis of the said deed only became a mere name lender. The learned Munsif in his judgment held that section 14X of the West Bengal Land Reforms Act created an expressed bar to the Civil Court to decide any dispute coming within Chapter II(B) of the West Bengal Land Reforms Act, which was to be decided by the R.O. But at the same time, he found that the Civil Court had the competence to examine the basis of acts upon which the authority assumed Jurisdiction and found that the notice of section 14T was not served upon the ralyat Kashiswari and therefore, there was a violation of natural Justice and thereafter he entered into the question and deciding that the order of vesting was wrong and decreed the suit. In appeal, the learned first appellate Court found that the plaintiff/respondents were well aware of the order of vesting and that in connection with the

proceeding initiated by the R.O., such Court found that Gour Prasad Dutta one of the respondents before him appeared and prayed for time to contest the case before such authority. In that background, he came to a clear finding that it could not be said that the respondents were not served with a notice of the proceeding u/s 14T by the R.O. The learned appellate Court below also pointed out the apparent contradiction in the plaintiffs case by observing that the trial Court held that P.W.1 (one of the respondents before the trial Court) was a adult male member and had no property of his own and in view of the section 14K of the West Bengal Land Reforms Act, he would be treated as a member of his mother's family. He has further pointed out that the specific case of the plaintiff/respondents was that the deed of gift was a benami and if the same be proved then all the respondents would have their separate shares in it. The learned appellate Court also pointed out that both in the C.S. and R.S. record of rights, the name of Kashiswari was recorded. In this way, the learned appellate Court ultimately came to a conclusion that the learned Court below improperly dealt with the matter and came to an erroneous conclusion. Accordingly, the appeal was allowed and the Judgment and decree passed by the trial Court was set aside.

3. At the time of admission of the appeal, it transpires it was only noted by the Division Bench of this Court admitting the appeal that the present appeal would be heard. In this background, at the time of hearing of the appeal, on going through the Judgments delivered by the Courts below and the memo of appeal and after hearing the learned Advocate for the appellant I have formulated the following question as the only question for consideration in the present appeal. It reads as follows :--

Whether the first appellate Court reversed the Judgment of the trial Court without any proper reason?

4. Before I proceed further I should point out the language of the specific provision contained in section 14X, which bars the Jurisdiction of civil Court, it reads as follows :-

No civil Court have jurisdiction to decide or deal with any question or to determine any matter which is by or under this Chapter required to be decided or dealt with or to be determined by the Revenue Officer or other authority specified therein and no orders passed or proceedings

commenced under the provisions of this chapter shall be called in question in any civil Court.

5. Thus the said provision makes it clear that the orders passed in the proceeding Under Chapter 2(B) should not be called in question in the Civil

Court and the authorities specified under that chapter have the jurisdiction to determine the question of ceiling area and other allied matters in the

manner prescribed In chapter 2(B). The only reason which prompted the learned trial Court to Interfere with the vesting order passed by the

authority concerned is that there was a denial of natural justice due to the absence of any notice. The learned appellate Court reversed that finding

by pointing out that the notice was served upon the party otherwise it would not be possible for such party to appear in connection with the

proceeding and to pray for time. I do not find any reason to hold that such a finding is not based on any evidence or it is based on conjectures,

surmises etc. No doubt, in the allegation raised in the plaint, the plaintiff/appellants contended that the deed of gift executed by the owner of the

property In favour of his wife Kashiswari was a mere paper transaction and the same was never acted upon and Kashiswari through the deed of

gift only became a name lender and not the actual owner of the properties and it is also well settled that this question remained outside the scope of

the consideration of the authority, namely, the Revenue Officer. But it has been rightly pointed out by the learned first appellate Court that both the

finally published C.S. record of rights and R.S. record of rights in respect of the suit properties stood in the name of the said Kashiswari. There Is

a presumption of correctness of finally published record of rights and therefore it can be said the authority concerned was apparently justified

inproceeding against the person, namely, Kashiswari in whose name the properties stood recorded both in C.S. and R.S. record of rights. There is

nothing to suggest that before the initiation of the proceeding, the plaintiff/appellants had any occasion to raise any objection, against the recording

of such finally published record of rights.

6. The learned Advocate at the time of advancing his argument referred to case of R. Rajagopal Reddy (dead) by R. Rajagopal Reddy (dead) by

L.Rs. and others Vs. Padmini Chandrasekharan (dead) by L.Rs., , wherein it has been held that section 4(1) of the Benami Transactions

(Prohibition) Act cannot have any retrospective effect But that question is not relevant for the purpose of deciding, the point at issue alleged

through the pleadings of the parties. I have already noted that the plaintiffs took a plea that Kashiswari in whose name both the C.S. and R.S.

record of rights stood was a mere name lender but she was never the actual owner because the owner of the property, namely Bishnu Prasad

Dutta. although executed a deed of gift in favour of his wife Kashiswari but the same was never acted upon. But at the same time, it is also true that

no serious attempt was made to establish before the Courts below that Kashiswari was not the real owner of the property inspite of such deed of

gift. On the other hand, as I have already noted the admitted position here is that both the C.S. as well as R.S. record of rights stood in the name

of the said Kashiswari and there is nothing to suggest that the plaintiffs ever tried to raise any objection against such erroneous recording. In that

background, it can be said that in the proceeding under the provisions of the West Bengal Land Reforms Act, the R.O. was not required to decide

whether Kashiswari was the actual owner or a mere name lender as the authority proceeded on the basis of the record of rights which were never

challenged. The learned Advocate for the appellant has also referred to the decision of Katikara Chintamani Dora and Others Vs. Guntreddi

Annamanaidu and Others, . In that case, the apex Court considered the limits of the respective jurisdiction of the Settlement Officer/Tribunal and

the Civil Court in relation to an enquiry u/s 9(1) of the Madras Estates and Conversion into Ryotwari Act, 1948 wherein it was provided that the

decision of the Tribunal under the said Act would be final and not to be questioned in any Court of law. In dealing with the matter, the Hon"ble

Court has held that by virtue of section 9 of the Code of Civil Procedure, the Civil Courts have jurisdiction to decide all suits of a Civil nature

excepting those of which their cognizance is either expressly or impliedly barred. The apex Court went to consider further how far section 9(1) of

the aforesaid Act conferre exclusive jurisdiction on the Settlement Officer to determine the question of Inam estates? In doing so, the Hon"ble

Court had held that the exclusive Jurisdiction of the Civil Court would be subject to two limitations. First, the Civil Courts have jurisdiction to

examine into cases where the provisions of the Act have not been complied with or the statutory tribunal had not acted in conformity with the

fundamental principles of judicial procedure. The second is as regards exact to which the powers of statutory tribunals are exclusive. In the instant

case, I have already mentioned that through section 14X of the West Bengal Land Reforms Act, the jurisdiction of the Civil Court has been

expressly barred. I have also noted that there is no circumstances pleaded or established, to come to a conclusion that the provisions of the Act,

have not been complied with by the authority concerned. The plaintiff have failed to establish that such authority failed to act in conformity with the

fundamental principles of judicial procedure and in doing so I should once again repeat that I have no reason to disagree with the finding of the

learned first appellate Court that in connection with the proceeding drawn up by the Revenue Officer, the person concerned, namely, Smt.

Kashiswari in whose name both the record stood was given the notice and pursuant to that on behalf of such party an appearance was made and

there was also a prayer for time. It is evident that the first appellate Court did not reverse the Judgment without any proper reason.

7. Before I conclude I must point out that in the instant case, there is no substantial question of law involved. The apex Court in the case of Sheel

Chand Vs. Prakash Chand, has categorically observed that the existence of a substantial question of law is the sine qua non for the exercise of

jurisdiction by the High Court under the amended provisions of Section 100 C.P. Code. In the instant case, the whole allegation is that in

connection with the proceeding initiated by the R.O., no notice was served. So, that question is a purely a question of fact and I have seen that the

learned Appellate Court after assigning reason came to a finding and therefore it is not open to this Court to re-assess the findings of such Court on

this point and to come to a different finding.

8. In the result, the present appeal must fail. Accordingly, the appeal is dismissed. Since none has appeared on behalf of the respondent. I make no

order as to costs. Let a copy of this judgment along with the LCR be returned to the Court below for information and necessary action. If any.