
(2013) 08 CAL CK 0090
In the Calcutta High Court
Case No : C.O. No. 1849 of 2013

Sri Kangali Deyashi

APPELLANT

Vs

Sri Kanai Lal Chari and Others

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 47
West Bengal Acquisition Of Homestead Land For Agricultural Labourers, Artisans And Fishermen Act, 1975 — Section 12, 4

Citation : (2014) 1 CHN 414

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Probal Kumar Mukherjee, Mr. Nilanjan Bhattacharjee and Mr. Sanjay Karar, for the Appellant; Bidyut Kumar Banerjee and Mr. Arnab Ray, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the judgment debtor and is directed against the Order No. 80 dated February 28, 2013 passed by the learned Civil Judge (Junior Division), Amta in Misc. Case No. 5 of 2011 arising out of Title Execution Case No. 6 of 2007 arising out of Title Suit No. 44 of 2006. The plaintiffs/opposite parties herein instituted a suit for eviction, recovery of possession and injunction before the learned Trial Judge against the defendant and the said suit was decreed ex parte. The said decree was put into execution and in that execution case, the judgment debtor filed an application u/s 47 of the C.P.C. which was converted to Misc. Case No. 5 of 2011. That misc. case was dismissed on contests. Being aggrieved, this application has been preferred by the judgment debtor.

2. The point for determination is whether the impugned judgment and order should be sustained.

3. Upon hearing the learned Counsel for the parties and on going through the

materials on record, I find that the learned Trial Judge has made an elaborate discussion as to the merit of the said misc. case and his ultimate conclusion is that the application u/s 47 of the C.P.C. has no legs to stand upon and, therefore, the judgment debtor is not entitled to get any favourable order.

4. Mr. Probal Kumar Mukherjee and Mr. Nilanjan Bhattacharjee, learned Advocates for the petitioner, have contended before me that in view of the admission of the plaintiffs/decreed-holders/opposite parties herein that the suit property comes within the purview of the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975. The petitioner was granted patta under the said Act and in such a situation, according to Section 12 of the said Act, the Civil Court has no jurisdiction to entertain the suit. Accordingly, the application u/s 47 of the C.P.C. should have been allowed.

5. In this respect, Mr. Bidyut Kumar Banerjee, learned Senior Advocate appearing for the opposite parties, has contended that the plaintiffs/decreed-holders/opposite parties herein have never admitted in the plaint that the petitioner is a patta-holder u/s 4 of the said 1975 Act or that this Court has no jurisdiction to entertain the suit.

6. He has drawn my attention to the contents of the plaint to the effect that in fact, the plaint discloses that the learned Advocate, Sri Monojit Bhattacharjee appearing for the petitioner wrote a letter dated April 18, 2006 to the learned Advocate for the plaintiffs/opposite parties herein to the effect that the suit land comes within the provisions of Sections 4 & 12 of the said 1975 Act and as such, the Civil Court has no jurisdiction.

7. Upon going through the copy of the said plaint, I find that the submission of Mr. Banerjee is correct. The plaintiff has never admitted in his plaint the contention as raised by the defendant/petitioner herein. The relevant paragraph of the plaint lays down the letter written by the learned Advocate for the defendant/petitioner herein as to the provisions of 1975 Act. Therefore, such contention on behalf of the learned Advocates for the petitioner cannot be accepted.

8. So far as the merit of the case is concerned, I find that after the disposal of the suit ex parte, the defendant/petitioner herein took steps under Order 9 Rule 13 of the C.P.C. and the said application was rejected. A misc. appeal was preferred and the said misc. appeal was dismissed for default. Thereafter, the defendant/judgment debtor did not take any step and so, in my view, the ex parte decree passed by the learned Trial Judge had attained its finality.

9. Mr. Banerjee has also referred to the order dated April 28, 1997 of the C.O. No. 2143 of 1995 of this Hon"ble Court wherein it has been held that the provisions of the said 1975 Act have no application to the title suit brought by the plaintiff and as such, the learned Trial Judge has rightly rejected the contention of the defendant/petitioner herein.

10. Mr. Probal Kumar Mukherjee has referred to the decision of Sarwan Kumar and Another Vs. Madan Lal Aggarwal, particularly the paragraph No. 21 and thus, he has submitted that if a decree passed by the Court is a nullity and appropriate application u/s 47 of the C.P.C. is quite maintainable for challenging the execution of the said decree and thus, he has submitted that the instant application could well be entertained for dismissal of the application for execution of the decree.

11. With due respect to Mr. Mukherjee, I hold that this decision is not applicable in the instant case in view of the fact that if the Court passing the decree lacks the inherent jurisdiction to pass a decree, that decree becomes a nullity and the same is not executable. Here the situation does not govern the same position. So, this decision will not be applicable in the instant case.

12. In that view of the matter, I am of the opinion that since the petitioner has lost in all the battles, there is no scope of entertaining the application u/s 47 of the C.P.C. The learned Executing Court has rightly rejected the application u/s 47 of the C.P.C. holding that the said application has no legs to stand upon.

13. Accordingly, this application is devoid of merits and is, therefore, dismissed.

14. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.