

(1956) 03 CAL CK 0008
In the Calcutta High Court
Case No : Civil Revision Case No. 3380 of 1955

Sripati Charan Panja and Ors

APPELLANT

Vs

Narendra Nath Roy Choudhury and Ors

RESPONDENT

Date of Decision : 20-03-1956

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 2(p), 39(1), 44, 46

Citation : 60 CWN 1070

Hon'ble Judges : Bachawat, J

Bench : Single Bench

Advocate : Bijan Behari Das Gupta and N.C. Talukdar, for the Appellant; Syama Charan Mitter and Jnanendra Mohan De for the Opposite Party No. 1, for the Respondent

Judgement

Bachawat, J.—This is a revision petition against an order refusing to stay a suit u/s 46 of the West Bengal Estates Acquisition Act, 1953. The plaintiff prays for, (a) a declaration of permanent tenancy rights in the disputed lands on the ground of alleged adverse possession for over 12 years and also by virtue of part performance under an unregistered lease, (b) for possession of a portion of the land from which the plaintiff is said to have been dispossessed by the building of a temporary thatched hut, (c) for a decree for possession of such part of the land from which the plaintiff may have been dispossessed and (d) injunction restraining the defendants from interfering with the plaintiff's possession. The plaintiff alleges that the defendants wrongfully denied the plaintiff's tenancy rights in the disputed land.

2. The defendants applied for stay of the suit u/s 46 of the West Bengal Estates Acquisition Act, 1953, which reads as follows:

Where an order has been made under sub-section (1) of section 39 directing the preparation or revision of a record-of-rights, no Civil Court shall, until after the final publication of the record-of-rights under sub-section (2) of section 44, entertain any suit or application for the determination of rent or determination of

the status of any tenant or the incidents of any tenancy to which the record-of-rights relates, and if any such suit or application is pending before a Civil Court on the date of such order it shall be stayed

Provided that in computing the period of limitation prescribed by any law for the time being in force for any suit or application, the time during which such suit or application cannot be entertained or remains stayed under the provisions of this Act shall be excluded.

Explanation--In this section suit includes an appeal.

No Civil Court should entertain any suit or application regarding rent, status or any incidents of any tenancy after the order u/s 39(1) and if there be any such proceeding pending before it, it should be stayed, till the final publication of the record-of-rights.

The time during which such suit cannot be entertained or is stayed should be excluded in computing the period of limitation.

3. It is common case that all order has been made u/s 39(1) and, rule 26 directing preparation of Record and rights including the lease of the tenants.

4. It is contended that the suit is for determination of the status of a tenant. The expression "determination of the status of any tenant" is not defined in this Act. By section 2(p) expressions used in this Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act, 1885, applies the same meaning as in that Act.

5. Sections 111 and 111B of the Bengal Tenancy Act provide for stay of suits in cases where record-of-rights is prepared under the Bengal Tenancy Act.

6. Under the Bengal Tenancy Act preparation of the record-of-rights takes place in case (a) where a settlement of land revenue is being or is about to be made, and (b) where a settlement of land revenue is not being or is not about to be made.

7. In case (a) settlement of rent-roll is dealt with by sections 104 to 104 J and stay of suit is provided for by section 111 (a). Section 111 does not provide for stay of 1 decision as to the existence of the relationship of landlord and tenant. Section 111 is subject to section 104 H which provides for suit after the final publication of the record-of-rights raising an issue as to the nonexistence of such relationship.

8. In case (b) settlement of rent-roll is dealt with by sections 105 to 169. The issue as to whether the relation of landlord and tenant exists may be determined in proceedings under sections 105 A and 106. Stay of a suit in case (b) is provided for by section 111(b) and section 111 B. A suit for a decision as to the existence of such relationship instituted within four months of the final publication of the record-of-rights is stayed by section 111 B(1). If such suit is instituted before final publication of the record-of-rights, the Revenue Officer is

debarred from trying the issue and is enjoined to stay the proceedings before him until the final decision in the suit on this issue.

9. Sections 111 and 111 B read together show that a suit for determination of the issue whether the relationship of landlord and tenant exists is not within the purview of section 111. Such suit is not barred by that section though in view of section 102 the name of the tenant may have to be recorded in the record-of-rights.

10. In *Troylokhyanath Bose and others v. M. N. MacLeod and others* (1) (I.L.R. 28 Cal. 28) it was decided that a suit for possession on the allegation that the defendant is a trespasser and not a tenant is not liable to be stayed u/s 111. In *Rajaram Singh and others v. Sheo Persad Roy and others* (2) 3 C.L.J. 63 (Notes Portion) it was decided that a suit for possession is not barred by that section though the defendant sets up a tenancy. In *Kshemendra v. Rashamaya* (3) (32 C.W.N. 132) it was decided that a suit for possession on the allegation that the defendant is an under-raiyat is not barred by the section though the defendant claims to be an occupancy tenant. In all these cases the suit was for ejectment and was not for "-determination of the status of any tenant". The jurisdiction of the court depends upon the allegations made in the plaint. If on such a allegation the court has jurisdiction, such jurisdiction is not ousted though the defence raises a dispute as to the status of a tenant.

11. In *Lala Gangaram v. Krishna Gopal Jhunhunwalla and others* (4) 59 C.W.N. 1006 it was held that a suit for possession is not barred by section 46 of the West Bengal Estates Acquisition Act, 1953, though the defendant contended that he was a tenant. Clearly in that case the suit was for possession and not "for determination of the status of any tenant". For the reasons given above I agree with that decision.

12. In the West Bengal Estates Acquisition Act, 1953, there is no provision corresponding to section 111 B of the Bengal Tenancy Act. Section 46 of the West Bengal Estates" Acquisition Act, 1953, does not provide for stay of a suit for the determination of the issue as to whether the relationship of landlord and tenant exists. In my opinion, a suit for determination of such issue and for declaration that the plaintiff is entitled to tenancy rights and for consequential reliefs is not a suit, for "determination of the status of any tenant. In my judgment, the impugned order was correctly made. This suit is not liable to be stayed u/s 46 of the West Bengal Estates Acquisition Act, 1953.

The Rule is discharged with costs.