

(1949) 04 CAL CK 0032
In the Calcutta High Court
Case No : A.F.A.O. No. 225 of 1947

Sudarshan Chandra Karmakar and others	APPELLANT
Vs	
Karunasindhu Mandal and others	RESPONDENT

Date of Decision : 04-04-1949

Acts Referred:

Citation : (1949) 04 CAL CK 0032

Judgement

Das Gupta, J.—Three out of several judgment-debtors, whose property had been sold in execution of a decree, filed an application under S. 37A, Bengal Agricultural Debtors Act and obtained an award under which these three applicants became entitled to obtain possession of the entire property. When they applied to the civil Court for obtaining recovery of possession in accordance with this award, an objection was taken that the order passed by the Board was without jurisdiction. It was argued that the three out of a large number of judgment debtors were not competent to make an application under S. 37A, Bengal Agricultural Debtors Act.

2. This argument was rejected by the learned Munsif, but found favour with the learned Subordinate Judge who heard an appeal from the decision of the learned Munsif rejecting the objection and ordering restoration of possession.

3. The learned Subordinate Judge has held that where the property, which has been sold, belongs to a number of persons, all these persons will have to join the application before any relief under S. 37A, Bengal Agricultural Debtors Act can be given.

4. It is contended in appeal against that decision that the learned Subordinate Judge is wrong and that any one of a large number of persons, whose property has been sold, is entitled to file such an application and obtain relief under the provisions of S. 37A.

5. There would have been no doubt if the language of S. 37A had been that when any immovable property belonging to one or more persons has been sold etc.,

any one or more of such persons, or his heirs etc., may apply for relief under this section. The question is whether even though the language is not clear and unambiguous like this, a reasonable interpretation is that it should be read as if the words were as mentioned above. At first sight, it seems that when the section does not use the words as I have indicated above, but uses the language, namely, "when any immovable property of any person has been sold...such person or his heir etc...." the "such person who can make an application" must coincide with "any person whose property has been sold". In other words, if the property which has been sold belongs say, to 10 persons, the application must be made by all the ten of them. The practical inconvenience that would result from such an interpretation would no doubt be that where the number of the judgment-debtors whose property has been sold is very large, it might be impossible for them to get the benefit of this section. Apart from this, there is one significant fact which we cannot ignore. In cl. (b)(iii) of sub-s. (1) of S. 37A, we find a clear recognition that one of several persons liable jointly for a debt can make an application. This is the only possible meaning of the words:

in the case of a debt for arrears of rent in respect of which such person was liable jointly with any other person.

6. As pointed out by Mr. Sen on behalf of the respondents, difficulties and complications may no doubt arise from the interpretation sought to be put on behalf of the appellant that if the property belongs to several persons, any one of them may file an application. The result of relief being given under this section would be that possession would be restored not to all the persons to whom the property belonged and who were in possession of the property but to that one person who had made the application and he would remain in such possession till the whole amount payable under the award had been paid off, or the expiration of 20 years from the date of the award. There would obviously be nothing unfair to the other persons to whom the property belonged so long as the debt was being paid off by this one applicant. But what about the position after the debt has been paid off, or after 20 years have elapsed? It might perhaps be too much to contend that the one applicant who had been in possession and as such had paid off the debt in accordance with the award would become entitled in law to this property. At the same time, if he refused to part with the property, his co-proprietors might find it difficult to obtain possession.

7. It is at the same time necessary to remember that these co-proprietors are not in any worse position than they would have been if the application had not been allowed at all. For if the application by one of several co-proprietors had been held to be incompetent and not been allowed, the property would have remained with the decree-holder, or in certain cases, a transferee from him. That would not have in any way helped the co-proprietors.

8. For all these considerations, it seems to me that though the language of the section is not very happy and not free from ambiguity, the reasonable interpretation is, as contended by the learned advocate for the appellant, that

when any immoveable property of one or more persons has been sold, any one or more of such persons or his heirs, executors etc., may apply for relief.

9. I am fortified in this decision by the opinion expressed by a Bench of this Court in the case of Goppi Ballav Mondal Vs. Aswini Kumar Mondal and Others, . In that case, this question was raised and though their Lordships thought that it was not necessary to give a general answer, they did decide to express an opinion and the opinion they expressed was that any one of the several persons, whose property has been sold, is competent to make an application under S. 37A, Bengal Agricultural Debtors Act.

10. I hold accordingly that the learned Subordinate Judge was wrong in holding that the award was without jurisdiction. I, therefore, set aside his order and restore the order passed by the learned Munsif.

11. In the result, the appeal is allowed with costs.