(1975) 09 CAL CK 0022

In the Calcutta High Court

Case No : A.F.O.O. No''s. 367-375 of 1975

Sushil Kumar Ghosh and Others — APPELLANT

Vs

Revenue Officer, Balurghat and Others — RESPONDENT

Date of Decision : 16-09-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
West Bengal Estates Acquisition Act, 1953 — Section 5A

Citation : AIR 1976 Cal 1

Hon'ble Judges : Shankar Prasad Mitra, C.J;Salil Kumar Datta, J

Bench : Division Bench

Advocate : Manindra Nath Ghosh and Sourendra Prasad Ghosh, for the Appellant;Sushil Kumar Biswas and Moni Bhusan Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

Sankak Prasad Mitra, C.J.—By this judgment we propose to deal with nine appeals. These are First Miscellaneous Appeals Nos. 367 to 375 of 1975. These appeals arise out of Civil Revision Cases Nos. 6927 (W) to 6935 (W) of 1960.

2. Two brothers. Srikanta Ghosh and Puma Chandra Ghosh, held extensive lands in West Dinajpore. It is alleged that these two brothers by unregistered deeds executed between January 31, 1953 and February 8, 1953 had transferred certain lands in favour of their sons and daughters individually. It is further alleged that these transfers by unregistered deeds were subsequently confirmed by registered deeds in or about October, 1954. The respondents sought to apply the provisions of Section 5A of the West Bengal Estates Acquisition Act, 1953 to these transfers. Now, in order to attract the said provisions, it is necessary to show that the intermediary transferred lands between the 5th May, 1953 and the date of vesting, that is, the 15th April, 1955. The registered deeds, in the instant case, were executed within the said period.

3. In or about 1958 A number of proceedings u/s 5A were initiated in respect of the aforesaid transfers. The Revenue Officer took the view that the transfers

were bona fide inasmuch as they were effected before the prohibited period by unregistered documents which were subsequently confirmed by registered documents. The Revenue Officer obviously overlooked the legal position that there could be no transfer by unregistered documents irrespective of whether the transfers were bona fide or mala fide. No appeal was preferred against the decisions of the said Revenue Officer but his successor in 1969 initiated the impugned proceedings once more disputing the bona fides of the transfers u/s 5A of the Act The subsequent proceedings instituted in 1969 were challenged in writ applications before this Court. Mr. Justice Anil K. Sen by his Lordship''s judgment delivered on the 13th August. 1974 has discharged the Rules. These appeals are directed against the discharge of the Rules.

4. Mr. Manindra Nath Ghosh, learned Advocate for the appellants, has canvassed before us only one point, namely, whether the decisions in the former proceedings made by the Revenue Officer u/s 5A operate as res judicata in subsequent proceedings under the same section. Our attention has been drawn to Ambujakhya Mukherjee v. The State ILR 1966 Cal 495 at p. 612 and to the judgment in Civil Revn. Case No. 4658 of 1960 (Cal.) (Haripada Mandal v. The State).

5. On the facts and in the circumstances of this case it is unnecessary to refer to the authorities to which reference has been made. We have examined the order passed by the previous Revenue Officer. In the concluding portion of his order the Revenue Officer states :

"As the actual transfer of lands took place before the mischief of Section 5A of E. A. Act came into force and the possession of lands were delivered then and there: the transaction of later date cannot come into the way of dispossessing. The transferees, I am of opinion (are entitled) to the benefit of the unregistered deeds of gift......... Hence, I come to (the) decision that there is no reason to believe that the transfers were not bona fide."

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6. It seems to us that the Revenue Officer was of opinion that he had no jurisdiction to decide upon the bona fides of the transfers by unregistered deeds in-as-much as these transfers were effected before the 5th May, 1953. It is well known that a decision on jurisdiction cannot operate as res judicata. The Supreme Court in Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, has said that

"a question relating to jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision by that Court. If by erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties whether the cause of action in the subsequent litigation is the same or otherwise because, if those decisions are considered as conclusive, it will assume the status of a special rule of Law applicable to the parties relating to the jurisdiction of the Court in derogation of the rule by the legislature."

7. If, therefore, a decision on jurisdiction does not operate as res judicata in Courts the principle is all the more applicable to administrative authorities exercising quasi-judicial functions. Mr. Ghosh for the appellants has submitted to us that not only has the previous Revenue Officer said that the unregistered transfers were made before the 5th May, 1953 he has also held on merits that the transfers were bona fide. And even if his decision on merits be wrong, this Court cannot substitute its own views for the views of the Revenue Officer. We are unable to agree with this contention of Mr. Ghosh. It is true that the previous Revenue Officer has made certain observations on merits. But before he makes those observations he reaches the conclusion that he had no jurisdiction to go into the question inasmuch as the transfers were effected before the 5th May, 1953.

8. In the result, these appeals are dismissed. There will be no order for costs. All interim orders, if any, are vacated.

9. Mr. Ghose has orally applied for a certificate for leave to appeal to the Supreme Court As we are of opinion that these appeals do not raise any substantial question of law of general importance, the prayers for certificates are refused.

Salil Kumar Datta, J.

10. I agree.

