

Ananda Kumar Halder Vs. Appellate Authority and ors.

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Court : Kolkata

Decided On : Feb-22-2001

Reported in : AIR2001Cal92

Judge : Bhaskar Bhattacharya, J.

Acts : Restoration of Alienated Land Act, 1973 - Section 4 and 4(4); ;[Constitution of India](#) - Article 227

Appeal No. : C.O. No. 3113 of 1987

Appellant : Ananda Kumar Halder

Respondent : Appellate Authority and ors.

Advocate for Def. : Jyotirmoy Bhattacharya, Adv. for Respondent No. 3

Advocate for Pet/Ap. : P.B. Sahoo, ;P.K. Chakraborty and ;M. Roy, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

Bhaskar Bhattacharya, J.

1. This revisional application under Article 227 of the [Constitution of India](#) is at the instance of a Second Transferee in a proceeding under Section 4(1) of the

Restoration of Alienated Land Act, 1973 ('Act') and is directed against order dated July 13, 1987 passed by the Sub-Divisional Officer, an Appellate Authority, under the Act in L.A.A. No. 23 of 1986, thereby affirming the order dated February 28, 1986 passed by the Special Officer under the Act.

2. One Sukumar Ghosh, the father of the opposite party No. 3 herein, sold the disputed property in favour of opposite party No. 4 who in his turn transferred the property to the present petitioner.

3. On the death of said Sukumar Ghosh, the opposite party No. 1 filed an application under Section 4 of the Act for restoration of the land transferred on the ground that the property was transferred in distress and that there was an oral agreement of reconveyance.

4. The Special Officer by order dated February 28, 1986 allowed such application.

5. Being dissatisfied, the present petitioner preferred an appeal before the Appellate Authority under the Act and by the order impugned herein the said Appellate Authority has affirmed the order passed by the Special Officer.

6. Being dissatisfied, the second transferee has come up with the instant application.

7. Mr. Sahoo, the learned counsel appearing on behalf of the petitioner has drawn attention of this Court to the deposition of the opposite party No. 3 where he admitted that Sukumar Ghosh died leaving other heirs. By relying upon such piece of evidence Mr. Sahoo contends that those heirs of Sukumar Ghosh, the original transferors, not having been made parties to the instant proceeding, the proceeding was not maintainable and as such the authorities below acted without jurisdiction in granting relief to the opposite party No. 3 in a defective proceeding. In support of such contention Mr. Sahoo relies upon the second Proviso to Section 4(4) of the Act.

8. Mr. Sahoo next contends that the disputed property was neither an agricultural land nor was Sukumar Ghosh an agriculturist and as such the Act has no application to the transaction in question. In support of such submission, Mr.

Sahoo relies upon a Division Bench decision of this Court in the case of Prosad Kumar Dhara v. Kamala Kanta Dikshit, reported : AIR1982 Cal532 .

9. Mr. Sahoo lastly contends that in the deed, acquisition of more valuable property having been mentioned as the object of transfer, the authorities below erred in law in allowing the application.

10. For the purpose of appreciating the first contention raised by Mr. Sahoo, the provisions contained in Section 4(4) of the Act is quoted hereunder :--

'If after considering such evidence and hearing the parties, the Special Officer is satisfied that such transfer was made by the transferor within the time, and for the purpose, referred to in Clause (a) of Sub-section (1), or, as the case may be, within the time, and under the conditions, referred to in Clause (b) of that sub-section, the Special Officer shall make an order in writing restoring the land transferred to the transferor and directing the transferor to pay, in such number of equal instalments not exceeding ten and by such dates as may be specified in the order, the amount of the consideration which was actually paid by the transferee to the transferor for such transfer, together with interest on such amount at the rate of four per centum per annum from the date of his receipt of such consideration and the amount of any compensation for improvement effected to such land, allowed by the Special Officer and determined by him in the manner prescribed, less the amount determined in the manner prescribed of the net income from such land of the person in possession of such land as a result of such transfer.

Provided that the first of the instalments provided in the order made under this subsection shall be payable within three months of the date of the order.

Provided further that all the heirs of a deceased transferor or a deceased transferee shall be made parties in every proceeding under this Act.

Provided also that if the transferred land is partitioned by the transferee or his heirs, the Special Officer shall make an order in writing restoring the whole or any part of the land, as he may deem fit, to the transferor or his heirs, and where there are several heirs of a deceased transferor and some of them are not willing for

restoration of the transferred land the Special Officer shall make such order restoring the whole of such land in favour of the heirs who are willing for such restoration.

Explanation:-- Subject to the other provisions of this section--

(i) the word 'transferor' referred to in this Act means the first transferor or, where the first transferor is unwilling to get the transferred land restored, any subsequent transferor between the expiry of the year 1967 and the date of commencement of the West Bengal Restoration of Alienated Land (Amendment) Act, 1980 and includes the heirs of such first or subsequent transferor;

(ii) the word 'transferee' shall mean where the land is in the possession of any person other than the first transferee by virtue of a subsequent transfer such subsequent transferee and shall include the heirs of such transferee; and

(iii) the expression 'consideration which was actually paid by the transferee to the transferor' shall mean where there was more than one transfer, the amount which was paid by the first transferee to the first transferor.'

11. The aforesaid provisions make the legislative intention clear that if a transferor or a transferee dies, for the purpose of a proceeding under the Act, right to sue survives upon all their heirs. Thus, after the disputed, transaction if a transferor dies, all his heirs are entitled to maintain an application for restoration. But as it appears from the 3rd proviso, mentioned above, if in such a case, instead of all, some of the heirs of the transferor pray for restoration, the Special Officer shall, if the conditions of restoration are satisfied, order restoration in favour of only those heirs who applied for restoration. In such a case, those heirs are under no obligation to make the remaining heirs as parties to such proceeding. In such a position, a transferee is not entitled to contend that the proceeding should be dismissed for want of other heirs of the transferor by relying upon the second proviso directing that all the heirs of both the transferor and the transferee should be made parties.

12. In my opinion, keeping in view the principles laid down by the Apex Court in the case of Mahabir Prasad v. Jage Ram, reported in : [1971]3SCR301 as regards the right of an heir of a deceased party to proceed with a civil proceeding without impleading the other heirs, the combined effect of the 2nd and 3rd proviso to Section 4(4) read with explanation added thereon may be summarised thus :--

(a) On the death of the transferor, all his heirs can pray for restoration. But if only some of them decide to apply, the other unwilling heirs need not be made parties.

(b) Similarly, if the transferor dies during the pendency of an application for restoration before the Special Officer, some or any of the heirs can pray for being substituted without impleading the others.

(c) If the transferor dies during the pendency of an appeal against the dismissal of his application by the Special Officer, some or any of the heirs may apply for proceeding with the appeal as appellant without making other heirs as respondents in the appeal.

(d) However, if the transferor dies during the pendency of the appeal preferred by a transferee against an order allowing transfer, all the heirs of the transferor must be made parties. In such a case, in the absence of any of the heirs the appeal should be dismissed. In such an appeal, in case of the death of a transferee, some or any of the heirs can be substituted as appellant without substituting the others as respondents.

(e) Similarly, in an appeal mentioned in para (c) above if the transferee dies it is incumbent upon the transferor to make all the heirs as substituted respondents. In the absence of any of such heirs, the appeal will not be maintainable.

13. Applying the aforesaid rules to the facts of the present case, I do not find any substance in the first contention of Mr. Sahoo.

14. As regards the second contention of Mr. Sahoo, it appears from the written objection filed by his client before the Special Officer that there is no whisper that the original transferor was not an agriculturist. According to the definition of land mentioned in Section 2(2) of the Act, land includes homestead, tank, well and

water channel. Therefore, even if there is dome structure, that will not bring the transaction out of the Act unless it was specifically pleaded and proved that the land in question was beyond the purview of the Act.

15. In the absence of such plea before the Special Officer, I am not inclined to entertain such disputed question of fact before this proceeding under Article 227 of the [Constitution of India](#). I thus ignore the supplementary affidavit filed by the petitioner before this Court taking such new plea of fact.

16. The last contention of Mr. Sahoo is equally devoid of any substance in view of Section 4(5) of the Act. The principles mentioned in Sections 91 and 92 of Indian Evidence Act being inapplicable to a proceeding under the Act, the authorities below made no error in accepting the evidence as regards object of transfer although those were at variance with the object mentioned in deed. From the evidence it appears that even the witnesses for the petitioner herein admitted that Sukumar Ghosh, the original transferor was in distressed condition at the time of transaction, and thus the finding of the authorities below that for maintenance of his family, the transferor sold the property was quite in tune with the evidence on record. Therefore, there is no scope of interference with such finding of fact based on appreciation of oral evidence.

17. All the points taken by Mr. Sahoo having failed, I find no substance in this revisional application and accordingly the same is dismissed.