

Deepak Prakash and ors. Vs. Jayanta Kumar Bose and ors.

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Court : Kolkata

Decided On : Sep-04-2002

Reported in : AIR2003Cal153

Judge : Kalyan Jyoti Sengupta, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 20 - Order 9, Rule 5; [Income Tax Act, 1961](#) - Sections 269UD and 293; [Specific Relief Act, 1963](#) - Section 20; [Transfer of Property Act, 1882](#) - Section 54

Appeal No. : G.A. No. 741 of 2000

Appellant : Deepak Prakash and ors.

Respondent : Jayanta Kumar Bose and ors.

Advocate for Pet/Ap. : Mr. Banerjee

Judgement :

ORDER

Kalyan Jyoti Sengupta, J.

1. In this suit two applications have been taken out by the defendant Nos. 1 and 2 and by the defendant No. 5, basically for the same relief. In the application of defendant Nos. 1 and 2 reliefs are more specific, for setting aside and/or cancelling order dated 13th February 1996, revocation of leave under Clause 12 of

the Letters Patent and for taking the plaint off the file.

2. The petitioner, defendant Nos. 1 and 2 represented by their Senior Lawyer Mr. Hirak Mitra, contends firstly, that the order dated 13th February 1996, extending the returnable date for service of Writ, of summons, be set aside and cancelled as the same was passed ex parte. Secondly Court had no jurisdiction to pass the aforesaid order after expiry of three years from the date on which the fresh Writ of summons ought to have been lodged for service upon the defendants and there was no material in the petition for extending the time. By efflux of time for three years, valuable right had been accrued in favour of his client, so, before passing the above order the court should have given notice to his client. He contends, on receipt of Writ of Summons, having been affected by the said order his client had taken out similar application at the earliest possible opportunity. However, the application was disposed of by the Justice Barin Ghosh on 10th December 1999, whereby, Justice Ghosh was pleased to grant leave to take all these points on the subsequent application. The earlier application was disposed of without passing any order, as Justice Ghosh had no jurisdiction at that point of time. Immediately thereafter the present application has been taken out.

3. Mr. Mitra contends that the plaintiffs did not take any step for long seven years for service of Writ of summons. The learned Judge should not have granted extension of the returnable date for the service of Writ of summons, when there was inordinate delay, the learned Judge in all fairness should have dismissed the suit. In fact on almost identical facts and circumstances of this case the suits were dismissed. He has relied on two decisions of this Court reported in (1987) 91 Cal WN 391 (fort Gloster Industries v. Tatanagar Transport Corporation) and 1994 (2) C HN 161 (State Bank of India v. Tarit Appliances Pvt. Ltd.)

4. He further contends that valuable right has been accrued in favour of his client because of efflux of considerable time from the date on which the fresh Writ of summons ought to have been served, he has placed reliance on the Division Bench judgment of this Court, reported in (1957) 61 Cal WN 212.

5. In the application on which the ex parte order was passed there was no explanation as to why the same was not made within reasonable time. His further

contention is that in this case limitation for making application for extension of returnable date of Writ of summons is three years and governed by Article 137 of the Limitation Act 1963 and the date from which the aforesaid limitation is to be reckoned is inflexibly fixed. His next contention is that the present suit is for specific performance of an agreement, basically a suit for land, which situates outside the territorial limits of this Court. As such the plaint should be rejected on that ground also.

6. Mr. Surajit Nath Mitra while appearing on behalf of the defendant No. 5 adopted argument of Mr. Hirak Mitra and further contended that the suit is a suit for land and admittedly the land situates outside the territorial limit of this Court. Therefore, the plaint filed in the suit should be returned and to be presented before the appropriate Court.

7. Having heard the learned counsels for the parties and having gone through the records I shall examine the second point first, as to whether having regard to only prayer (a) of the plaint the instant suit is a suit for land or not. Without taking into consideration any material I have gone through the plaint in its entirety and I find the present suit has been filed not only for decree for specific performance of an agreement for sale of the immovable property, but also for some other reliefs, namely, setting aside and/or cancellation of pre-emptive order for purchase of the same very property passed by appropriate authority to the Income-tax Department under Section 269UD of the Income-tax Act 1961. I find the vires of Chapter XXC of the Income-tax Act (since repealed now) has also been challenged. It is quite apparent that until and unless the plaintiffs become successful in obtaining decree for setting aside and/or cancellation of the aforesaid order or for that matter on the question of vires of the aforesaid chapter, granting a decree for specific performance of the same is impossible. Going by the averment and having seen the place of business, excepting defendant No. 7 it cannot be said that this Court has no territorial jurisdiction. Moreover, in recent decision of the Supreme Court reported in : AIR 2001 SC3712 it has been held amongst others that the suit for specific performance of an agreement for sale of immovable property without having any relief for possession of the property cannot be a suit for land. I have examined the agreement, as well as the averment in this context of the plaint and

without any hesitation I hold that plaintiffs have asked simply for execution and registration of the conveyance and no relief for possession has been asked for, since they are in possession in different capacity. It has also been held by the Supreme Court that in a suit for specific performance the adjudication of right title and interest of an immovable property is not required and I respectfully adopt the same. Under those facts and circumstances of this case, I hold that the present suit if prayer (a) above is simply considered, is not a suit for land and going by the averment of the plaint in this respect the suit is perfectly entertainable by this Court. Therefore, the aforesaid demurer plea of both the sets of defendants is rejected.

8. The next point remains as to whether I should recall the order passed by Justice Ghosh granting extension of the returnable date of writ of summons and consequently for dismissal of the suit or not, I am of the view that the order of justice Ghosh cannot be recalled and/or set aside. The reasons for the views of mine are as follows:--Mr. Justice Ghosh had jurisdiction to pass an order, condoning delay and giving direction for issuance of the fresh Writ of summons. It appears from the previous petition on which Justice Ghosh passed the aforesaid order, that because of lapses and laches on the part of the Advocate-on-Record no Writ of summons could be lodged with the Sheriffs upon the defendants. It is not a case of issuance of fresh Writ of Summons, consequent upon return of summons being undelivered within the meaning of Order IX Rule 5 of the Code of Civil Procedure. It appears further in the petition that the plaintiffs were not at fault and no laches and negligence can be attributed to them and it was the sheer negligence on the part of the Learned Advocate-on-Record and/or his machinery.

9. Mr. Mitra contends that Learned Judge should not have entertained this application, as there was no sufficient particulars or averment for condonation of delay to justify passing such order.

10. I am unable to accept the submission of Mr. Mitra for the purpose of recalling of the order, though passed ex-parte, as it is absolutely subjective satisfaction of Mr. Justice Ghosh and also His discretion as to whether he should accept such grounds or not. If a learned Judge in His wisdom while exercising his discretion

accept a particular set of facts to be sufficient for granting appropriate relief, it is not for another Learned Judge exercising coordinate jurisdiction or for that matter exercising appellate jurisdiction to substitute His or Their own wisdom or reach Their own different subjective satisfaction. The averment made in the petition might have been insufficient to me to exercise such direction if 1 were there. But I cannot reopen and re-examine, not to speak of setting aside of the aforesaid order. However, I accept Mr. Mitra's argument that this kind of application can be accepted even after issuance of Writ of Summons and causing appearance in the suit without protest for recalling an order passed before entering into appearance in the suit. Mr. Mitra has very appropriately drawn my attention in this context to a Division Bench judgment of this Court reported in ILR 1966 Cal. 95 . In that case Their Lordships have been pleased to hold in paragraph 21 that, an application of this nature after having entered appearance in the suit without any protest can be maintained. It has also been held that the litigant is not precluded from challenging the order extending the time for the issue of fresh Writ of summons.

11. In the judgment of a Learned single Judge of this Court rendered in case of Badri Lal Daga v. Howrah Industries reported (1976) 1 C LJ 98 it is observed by His Lordship amongst others that while dealing with an application for issue of a fresh Writ of summons 'the master is a court' within the meaning of Order IX Rule 5(2) of the Code of Civil Procedure. Section 5 of the Limitation Act 1963 applies to applications for issue of fresh summons and if the Court is satisfied that there was sufficient cause for the delay, it may order issue of the summons even though the application is made after expiry of three months prescribed under Order IX Rule 5(3) of the Code of Civil Procedure. No appeal allows from an order made under Section 5 of the Limitation Act 1963.

12. In view of this ratio the order of Justice Ghosh was passed in exercise of His Lordship discretion and further condoning delay and this cannot be set aside by me.

13. In a Division Judgment of this court reported in 1985 (1) C HN 375 while discussing the provision of Chapter VIII Rules 6 and 7 of the Original Side Rules of this Court it has been observed that if there is laches and negligence on the part of

the Advocate and/or his clerk the same may afford a good ground for condonation of delay in serving a Writ of summons. It is categorically held that taking steps for getting Writ of Summons issued and lodging the same with the Sheriffs Department is a procedural and routine matter and for this no further instruction was necessary from the client. A lay party after handing over the matter on his lawyer with necessary instruction may remain satisfied that all necessary steps in the matter would be taken by his lawyer. The clerk of the advocate-on-record whose duty was to take appropriate steps in the matter failed to carry out his duty properly, there was negligence and default on his part. In the instant case in the petition for granting extension of service of Writ of Summons and for condonation of delay it has been specifically mentioned that the clerk of the advocate-on-record was not dutiful and as such the Writ of summons was not lodged with Sherifs department.

14. In another Division Bench judgment of this Court rendered in case of Laxmi Trading v. Shri Gobindanarayan reported in (1957) 61 C WN 212 cited by Mr. Mitra it was held amongst others that by reason of the expiry of three months time from the date on which the Writ of Summons was returned unserved and the failure of the plaintiff to make an application for extension of time for service of fresh summons within that period, a valuable right accrued in favour of the defendant. In an appeal by the plaintiff from the order dismissing the suit under Order IX Rule 5 of the Code the appellant cannot have an order destructive of that if in the absence of the defendant respondents of whom notice of appeal was served.

15. This case was dealt with under the provision of Order IX Rule 5 of the Code of Civil Procedure and furthermore it is factually distinguishable from that of the case on hand. There cannot be any dispute about the proposition laid down therein. In view of that case factually the plaintiff suit was dismissed on failure to serve Writ of Summons within the stipulated time of three months on Writ of summons returned unserved. Against the order of dismissal of the suit the plaintiff wanted to prefer an appeal for setting aside the order of dismissal ex parte. However, the Court observed that after the suit being dismissed valuable right had accrued in favour of the defendant. So, the order was not set aside by the Appeal court ex parte.

16. In the case of Gloster Industries Ltd. v. Tatanagar Transport Corporation reported in (1987) 91 C WN 391 learned single Judge of this Court dismissed the suit as His Lordship found that there is no sufficient ground to grant extension of time for service of Writ of Summons, so, the suit was dismissed.

17. In the judgment of a learned single Judge rendered in case of State Bank of India v. Tarit Appliances Pvt. Ltd. reported in 1994 (2) C HN 161 on which Mr. Mitra has relied heavily, it was found that the plaintiff therein did not take any step and for which application for extension was made before the Learned Judge and at the same time the defendant made an application for dismissal of the suit. The learned Judge factually found there exists no sufficient ground, hence the suit was dismissed without granting any extension. The ratio decided therein by the Learned Judge does not apply in this case as order granting extension has already been passed. So. If I am to apply the ratio, then I will have to first set aside the order of Justice Ghosh and thereafter to consider both the applications. As I have already observed such course of action would be a reckless exercise of jurisdiction of this Court if not unlawful one.

18. So far as the Supreme Court decision reported In 1979 SC 282 (sic) is concerned I feel that there is no dispute about the proposition laid down therein but to my mind it cannot be applied in this case.

19. Another point which came across in my mind and which was not argued initially is that going by the averment made in the plaint and the prayer made therein it appears to me the suit is barred by the law. Obviously, this ground falls within the provision of Order VII, Rule 11 of the Code of Civil Procedure. Therefore, I brought this matter after hearing was concluded initially in the list on 8th August 2002, in order to inform the parties about the point raised by me. The matter was again heard on this point since it was a question of law, argument was allowed to be advanced by the parties at length on 12th of August 2002. In the pleading and prayer of the plaint the plaintiffs have asked for relief for invalidating and/or setting aside the pre-emptive order passed by the defendant No. 6 namely Appropriate Authority of Income-tax under Section 269UD of the Income-tax Act. That apart, the vires of Chapter XXC of the Income-tax Act 1961 was also

challenged so it would be appropriate to quote the said Section.

269UD.(1) (Subject to the provisions of Sub-sections (1A) and (1B), the appropriate authority), after the receipt of the statement under Sub-section (3) of Section 269UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration:

Provided that no such order shall be made in respect any, immovable property after the expiration of a period of two months from the end of the month in which the statement referred to in Section 269UC in respect such property is received by the appropriate authority:

Provided further that where the statement referred to in Section 269UC in respect of any immovable property is received by the appropriate authority on or after the 1st Day of June, 1993, the provisions of the first proviso shall have effect as if for the words 'two months', the words 'three months' had been substituted :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where in defect as referred to in Sub-section (4) of Section 269UC has been intimated, with reference to the date receipt of the rectified statement by the appropriate authority :

Provided also that in a case where the statement referred to in Section 269UC in respect of the immovable property concerned is given to an appropriate authority other than the appropriate authority having jurisdiction in accordance with the provisions of Section 269UC to make the order referred to in this sub-section in relation to the immovable property concerned, the period of limitation referred to in the first and second provisos shall be reckoned with reference to the date of receipt of the statement by the appropriate authority having jurisdiction to make the order under this sub-section :

Provided also that the period of limitation referred to in the second proviso shall be reckoned, where any stay has been granted by any court against the passing of

an order for the purchase of the immovable property under this Chapter, with reference to the date vacancies of the said stay.

(1A) Before making an order under Sub-section (1) the appropriate authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person whom the appropriate authority knows to be interested in the property.

(1B) Every order made by the appropriate authority under Sub-section (1) shall specify the grounds on which it is made.

(2) The appropriate authority shall cause a copy of its order under Sub-section (1) in respect of any immovable property to be served on the transferor, the person in occupation of the immovable property if the transferor is not in occupation thereof, the transferee, and on every other person who the appropriate authority knows to be interested in the property.'

20. Mr. S. N. Mukherjee, Advocate led by Mr. Anindya Kumar Mitra, Senior Advocate on subsequent day argued on the question raised by the Court that the validity of Chapter XXC of the Income-tax Act, 1961 has been challenged in this suit and it can be done so in the suit under the law. Therefore, the order of pre-emptive purchase under Section 269UC of the said Act is absolutely void and invalid. It cannot thus be said that the aforesaid order was passed under the provision of the said Act, bar under Section 293 of the said Act will be applicable only when any proceeding taken or order made under the provision of this Act. In support of his contention he has relied on a decision of the Supreme Court rendered in K. S. Venkataraman and Company Pvt. Ltd. v. State of Madras reported in : [1966]60ITR112(SC) and also another decision of the same Court reported in : [1966]59ITR73(SC) (Bharat Kalabhandar Pvt. Ltd. v. Municipal Committee Dhamangaon).

21. His further argument in the alternative is that even if this Court holds ultimately that the pre-emptive order as well as aforesaid Chapter is not ultra vires then the agreement entered into by the vendor namely, the defendant Nos. 1, 2, 3, 4 and

with the plaintiffs are also binding upon the defendant Nos. 6 and 7 by virtue of the provision of the Transfer of Property Act as well as Section 19 of the Specific Reliefs Act, 1963. He, however, can did enough to say that during pendency of the suit the constitutional validity of the aforesaid Chapter has been decided upon by the Apex Court in C. B. Gautam's case reported in : [1993]199ITR530(SC) . He contends referring to this decision that by the said decision the proposed transferee in terms of the agreement is also entitled to a notice to be served upon it and hearing before any pre-emptive order is passed. In this case no such hearing was given. Therefore, the suit is perfectly maintainable. However, he emphasized that this question cannot be gone into at this stage. I find the argument of Mr. Mukherjee has some force as Section 293 of the Income-tax Act 1961 will be applicable in case when any proceeding taken or orders made under the Act and not otherwise. So the aforesaid Section is set out:

'293. No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act; and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.'

22. The proceeding and the orders as contemplated in the aforesaid section envisages lawful proceedings and orders within the provisions of the Act itself. If such proceedings or orders without any authority or jurisdiction are taken then the aforesaid bar cannot be applicable and in that case the person aggrieved has right to approach before the appropriate Civil Court or before the superior Court for judicial review of such action.

23. The decision cited by Mr. Mukherjee AIR 1966 SC 1889 the majority views have laid down the law as I have observed above. In the aforesaid case the appellant Private Limited Company during the years 1948-49 to 1952-53 were not assessed to Sales Tax by the State of Madras on the basis that the contract executed by them were works contracts. On April 5, 1954 the High Court at judicature of Madras held that in Gannan Dunkerley and Company (Madras) Ltd. v. State of Madras AIR 1954 Mad 1130 : 1954 5 STC 216 the relevant provisions of the Madras General Sales Tax Act empowering the State of Madras to assess

individual building contracts in Sales Tax was ultra vires the powers of the State Legislature.

24. In the said Act there was an almost identical statutory bar against filing of any suit, challenging any order of assessment, it was contended by the respondent state that in view of the statutory bar the aforesaid suit was not maintainable. Their Lordships in the majority decision held that after analyzing and discussing the various decisions particularly the decision rendered by Privy Council in *Raleigh Investment Co. Ltd. v. Governor General in Council* AIR 1947 PC 78 in paragraph 24 as follows :--

'The legal position that emerges from the discussion may be summarised thus : If a statute imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the maintainability of a civil suit in respect of the said liability. A statute may also confer exclusive jurisdiction on the authorities constituting the said machinery to decide finally a jurisdictional fact thereby excluding by necessary implication the jurisdiction of a Civil Court in that regard. But an authority created by a statute cannot question the vires of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it. If it acts on the basis of a provision of the statute, which is ultra vires, to that extent it would be acting outside the Act. In that event, a suit to question the validity of such an order made outside the Act would certainly lie in a Civil Court.

25. In paragraph 26 it was observed as follows :--

'The next question is whether Section 18(A) of the Act would be a bar to the maintainability of the suit. Under Section 18(A) of the Act, no suit or other proceeding shall except as expressly provided in this Act be instituted in any Court to set aside or modify any assessment made 'under this Act. We do not see any justification for the contention of the learned counsel for the respondent that the expression under this Act refers only to the power of the officer to make an assessment and the procedure to be adopted by him and not to the content of the assessment. Any assessment made under the Act, that is, under the provision of the Act, cannot be questioned. If the charging section is ultra vires, the

assessment made thereunder cannot be said to be made under the Act; it is really an assessment outside the Act. Indeed, as we have held, the foundation laid by the judicial committee for giving limited direction to the expression under the Act has no legal basis. We must give plain meaning to the words used in the section if so construed, we must hold that 'under this Act' refers both the procedural and substantive provision of the Act as the relevant part of the charging section was held to be ultra vires. We hold section 18(A) is not a bar to the maintainability of the present suit.'

26. In the second case of the Supreme Court the aforesaid principle was laid down more or less. In that case a suit was filed for refund of the tax Imposed illegally by the municipal authority and in the relevant Act there was a bar to file a suit. It was held that realization of tax imposed by the municipal authority is beyond the power of the Act itself. Therefore , it cannot be said the suit is not maintainable In view of contrary provision made in the concerned statute to challenge order of imposition of municipal taxes.

27. When the suit was filed and as the law was prevailing then it was perfectly maintainable as the very jurisdiction and power of the appropriate authority namely the defendant No. 6 was challenged in the suit itself. Therefore, the order could not be said at that stage, to have been passed under the Act.

28. However, during pendency of the suit the fundamental point which is raised in the suit to maintain itself has been settled and decided by the Apex Court in C.B. Gautam's case : [1993]199ITR530(SC) as stated above. It is settled position of the law that during pendency of the proceedings the Court can take judicial notice of the change of law and apply the same. No doubt the pronouncement of the Apex Court under Article 142 of the Constitution of India is the law of the land. In C.B. Gautam's case it has been expressly decided by the Apex Court that Chapter XXC of the Act is constitutionally valid. However, certain right of some person has been recognised and the same is deemed to have been incorporated in subsequent amendment in the said Chapter of the Act, whereby the proposed transferee is required to be served with notice and be heard before any pre-emptive order under Section 269(UD) is passed. So following the aforesaid C.B. Gautam's case

the legislative amendment was made by the finance Act of 1993 with effect from 17th Nov. 1992, which was appropriately quoted hereinafter.

'Before making an order under Sub-section (1), the appropriate authority shall give reasonable opportunity of being heard to the transferee, person in occupation of the immovable property if the transferer is not in occupation of the property the transferee and to every other person whom the appropriate authority knows to be interested in the property.'

29. It is true that the time of the filing of the suit the aforesaid provision was not there. But it cannot be said that the appropriate authority had passed order without his authority as the law stood on that date. In view of the judgment rendered by the Apex Court in C.B. Gautam's case : [1993]199ITR530(SC) now question of vires being fundamental issue to maintain this suit, has been covered. Whether the impugned pre-emptive order was bad because of without hearing being given to the plaintiff which is now required to be given by reason of amendment or not, cannot be questioned by the Civil Suit as bar under Section 293 of the aforesaid Act will be applicable following ratio decided in the aforesaid two Supreme Court decisions as cited by Mr. Mukerjee.

30. Therefore, I hold that no question can be decided in this suit in relation any relief excepting challenge against vires of the said Chapter as the same is barred under the provision of Section 293 of the aforesaid Act.

31. Now it has to be examined what is the implication of passing of the aforesaid order under Section 269UC, even assuming the suit can be maintained. Under the provision of Section 269UE of the aforesaid Act once the aforesaid order under Section 269UD of the appropriate authority is passed the property shall on the date of such order, vest in the Central Government In terms of the transfer referred to in Sub-section (1) of Section 269UC. Therefore, this statutory vesting obviously robs the transferor of all right, title and interest in the said property. I am of the view that in this civil action preemptive order of purchase cannot be set aside, therefore, relief for specific performance of the agreement of sale in respect of the same property cannot be granted automatically because of the fact that so long the pre-emptive order remains untouched the transferer, vendors are incapacitated

to convey the property as no title remains with them.

32. The contention of Mr. Mukherjee is that the provision of the Transfer of Property Act and the Specific Relief Act would be applicable in case of subsequent transfer, is wholly inappropriate as the aforesaid provision will be applicable in a case when there is voluntary transfer by act of the parties not in case of involuntary transfer or vesting of a property by operation of the statute. To make it more specific had the plaintiffs in this suit transferred the property during pendency of the suit by executing any conveyance in favour of the third party the provisions of the Transfer of Property Act and the Specific Reliefs Act would have been applicable. I fail to understand how provisions of Transfer of Property Act would be applicable, as in this case there is no transfer during pendency of this suit.

33. In any event when the property has been vested unto the Government in view of provision of Section 269UE of the Income-tax Act this Court will have to declare in this suit that vesting is illegal and invalid. So necessarily the question relating to title has to be decided. In the above Supreme Court decision rendered in case of *Adcon. Electronics P. Ltd. v. Daulat* reported in : AIR 2001 SC3712 after analysing all the earlier decisions of the apex Court as well as the other High Courts and Federal Court it has been held what would be suit for land in paragraph 15 of the said judgment. It has been laid down that a suit for land is a suit in which relief claimed relates to title or delivery of possession of land or immovable property. Whether the suit is a suit for land or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein. Where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a suit for land.

34. Though In the plaint delivery of possession has not been asked for but for the sake of repetition I am constrained to hold that when the property has been vested and to grant relief for divesting, this Court is bound to decide the question of title of the land since the title no longer lies with the plaintiff and the title to the land as on today stands passed over to the Government. To render a decision for divesting adjudication of title has to be done in this matter. The Immovable property admittedly situates outside the territorial limit of this Court, therefore, cannot in any

even grant any relief.

35. Under those circumstances I am unable to hold that the suit is maintainable as there is a statutory bar as contemplated in Section 293 of the Income Tax Act 1961 which operates as bar. Therefore the suit is liable to be dismissed.

36. I make it dear it would be open for the plaintiffs to challenge the order of the appropriate authority under Section 269UD of the Income-tax Act before the appropriate forum If so advised and the time during which the present suit was pending shall be ex-eluded if any such action is taken without a period of 15 days from date of making available of this judgment and order.

37. Thus, the applications are allowed to the extent as above. There will be no order as to costs.

38. Mr. Banerjee appearing for the plaintiff prays for stay of operation of the judgment. In other words, he wants the interim order already passed in the suit should continue for some time. I have considered his prayer since I have held that the suit is barred under the law there is no cause for continuation of interim order. Therefore, his prayer is rejected.

39. All applications and interim orders passed in the stand dismissed and vacated respectively.

40. Xerox certified copy of the judgment on urgent basis, if applied for be given in accordance with law.