

Dwarka Nath Prasad Atal

Vs

Ram Rati Devi

Civil Appeal No. 2253 of 1979

(CJI Y.V. Chandrachud, N.L. Untwalia, A.D. Koshal JJ)

20.08.1979

JUDGMENT

CHANDRACHUD, C.J. –

1. Heard counsel, special leave granted.
2. The respondent filed an application under Section 24 of the West Bengal Non-Agricultural Tenancy Act asking for pre-emption in respect of the property mentioned in Schedule 'A' of the application. That property originally belonged to Maharaja Cossimbazar Stone Works Private Ltd. which conveyed it to the appellant under a registered deed of sale dated June 27, 1975. The respondent's case was that she was a co-owner of the property and was therefor entitled to pre-empt the sale in favour of the appellant
3. The appellant resisted the respondent's claim for pre-emption on various grounds including the ground that the property involved in the proceeding being agricultural land, the civil court in which the respondent had filed her application for pre-emption had no jurisdiction to entertain the application by reason of the provisions of the West Bengal Reforms Act.
4. The learned Subordinate Judge held by his judgment dated December 6, 1977 that the property involved in the proceeding was an agricultural land, that Section 24 of the West Bengal Non-Agricultural Tenancy Act was not attracted and that the civil court had no jurisdiction to entertain the application. Consistently with these findings, the learned Judge dismissed the respondent's application. That order was set aside in appeal by the learned Second Additional District Judge, Birbhum, who came to the conclusion that the land was non-agricultural and therefore the Subordinate Judge had jurisdiction to entertain the application. The respondent's application for pre-emption was allowed by the learned Additional District Judge.
5. That judgment having been confirmed in appeal by the High Court of Calcutta, the petitioner has filed this appeal.
6. It seems to us that the only question which was argued before the learned Subordinate Judge was whether the civil court had jurisdiction to entertain the application. The decision of that question depended upon whether the land was agricultural or non-agricultural. The learned Judge dismissed the respondent's application on the narrow ground that since the land was agricultural, he had no jurisdiction to entertain the application. That judgment was overruled in appeal by the Additional District Judge. But instead of remanding the matter to the trial Court for decision on other issues, the learned Judge took it upon himself to dispose of the matter on merits. The High Court came to

the conclusion that in adopting that course the learned Additional District Judge had committed any error so as to justify its interference.

7. We are not sure that the High Court is right. It appears that on the other issues involved in the case the appellant, perhaps, desired to lead evidence but that opportunity was denied to him. Since the only question considered by the trial Court was one of jurisdiction, which depended upon the nature and character of the land and since we cannot exclude the possibility that the appellant may have been prejudiced by reason of denial to him of an opportunity to make good his case, it is in the interest of justice to afford him that opportunity.

8. Accordingly we set aside the judgment of the High Court dated February 7, 1979 and remand the matter to it with the direction that it shall decide the question whether the appellant, Dwarka Nath Prasad Atal, had raised other questions before the trial Court apart from the question of jurisdiction, whether he had sought an opportunity any prejudice has been occasioned District Judge, instead of disposing of the appeal on merits should have remanded the matter to the trial Court, the High Court may pass such order as it considers appropriate in the circumstances of the case : it may either set aside the judgment of the learned Additional District Judge and remand the matter to the trial Court for decision of the other questions or it may keep the civil revision application of its file and call for a finding on the relevant issue or issues from the trial Court. The latter course will obviate delay and may be preferred.

9. The question of jurisdiction and the question as regards the nature of the land will stand concluded by the judgment of the High Court which has affirmed the finding of the first appellate Court that the land is non-agricultural and the civil court has the jurisdiction to entertain and decide the respondent's application for pre-emption.

10. The matter will accordingly go back to the High Court for disposal in the light of the direction given above. There will be order as to costs.

</html