

# SUPREME COURT OF INDIA

State of West Bengal

Vs.

Hari Mohan Dana (D) by LRs.

C.A.No.2470 of 2007

(Dalveer Bhandari and Harjit Singh Bedi JJ.)

23.10.2008

## JUDGMENT

### **Harjit Singh Bedi, J.**

1. The facts leading to this appeal are as under:

2. The original land owner Kulada Prosad Dana and his wife Anila Dana, the predecessors-in-interest of the respondents, held about 26.65 acres of agricultural land which included a homestead. On 12th June, 1970 Anila Dana transferred 7.19 acres of land to her three sons and on 13th February, 1971, Kulada Prosad Dana transferred a further 14.55 acres of land to his sons. Both transfers were by way of registered gift deeds. As per Section 14T (3) of The *West Bengal Land Reforms Act, 1955* (hereinafter referred to as the "Act"), it was incumbent upon the Revenue Officer to determine the surplus area held by Kulada Prosad Dana's family but as no return had been filed by the landowners as provided in the Act, proceedings were initiated on 2nd December, 1977 by the Revenue Officer under Section 14T (3) thereof. Kulada Prosad Dana died in the meanwhile and his three sons - ( the present respondents ) filed Title Suit No. 422 of 1977 in the Court of the Munsif at Burdwan for a declaration of title and permanent injunction. The appellant- State of West Bengal filed a written statement raising various pleas including a challenge to the gift deeds made by Kulada Prosad Dana and Anila in favour of their sons. By judgment and order dated 29th July, 1981, the Munsif decreed the suit and issued a direction that no order for vesting of the land be passed and that the total area held by the family was within the permissible area of 25 acres. The State of West Bengal, thereafter filed Title Appeal No. 207 of 1981 in the Court of the District Judge, who set aside the order dated 29th July, 1981 and dismissed the suit. The Revenue Officer who had earlier been restrained by an interim order once again started with the proceedings on 22nd January, 1985 and vide order dated 8th February, 1985 held that out of the total land area belonging to the family, land measuring 14.29 acres was in excess. This area was declared as vesting in the State and possession thereof was accordingly taken. The land owners- respondents being aggrieved by the judgment aforesaid, filed Second Appeal No. 337 of 1985 in the Hon'ble High Court at Calcutta, and by its judgment dated 24th July, 2002, the High Court set aside the order of the District Judge dated 12<sup>th</sup> December, 1984 and

restored the judgment and decree dated 29th July, 1981 of the Munsif, and held that there was no surplus area in the hands of the family. The order dated 24<sup>th</sup> July, 2002 has been impugned by the State of West Bengal in this appeal.

3. At the very outset, Mr. Bhaskar P. Gupta, the learned senior counsel for the appellant - State has pointed out that by virtue of Section 61 of the Act, the jurisdiction of the Civil Court was barred in such matters though admittedly this objection had not been taken at any stage in the civil proceedings or even in the Special Leave Petition filed in this Court. He has pointed out that as this was a matter relating to jurisdiction, the appellant - State had filed I.A. No.7 in the present appeal to urge this additional ground and if this objection was to be taken into account, the very initiation of civil proceedings by Title Suit no. 422 of 1977 were no nest and outside the purview of the civil court. He has pointed out that assuming for a moment that this Court was not inclined to take cognizance of this question, he was willing to argue the case on merits so as to show that the order of the High Court was wrong.

4. Mr. S.B. Sanyal, the learned senior counsel for the respondent has, very fairly, not seriously disputed Mr. Gupta's submission based on Section 61 of the Act but has pointed out that as this plea has been raised at a very belated stage, liberty should be given by this Court (and without any argument as to limitation to be raised by the other side) so that the order of the Revenue Officer dated 8th February, 1985 could be challenged in appeal.

5. We have heard the learned counsel for the parties and gone through the matter carefully. It does appear from the trend of the arguments before us that the jurisdiction of the civil court in a matter pertaining to determination of surplus area under the Act is barred under Section 61 thereof. However, as the State had never raised this plea at any stage up to the Special Leave Petition in the Supreme Court and has raised it only as additional ground and as an afterthought after the SLP had been filed, we are of the opinion that the land owner - respondents must be given a chance to challenge the correctness of the order dated 8th February, 1985.

6. We, thus, allow this appeal, set aside the impugned order of the High Court dated 24th July, 2002 and order that the civil proceedings initiated by Title Suit No. 422 of 1977 must be held as being barred under Section 61 of the Act. We are informed that an appeal against the order dated 8<sup>th</sup> February, 1985 would be maintainable under Section 14T(7) read with Section 54 of the Act. In this background if an appeal is filed by the land owner - respondents within 60 days from the date that a certified copy of this order be supplied to them, the State of West Bengal shall not raise the plea of limitation.

7. As evident from the discussion above, we have not made any comment on the merits of the case. We, thus, leave it open to both parties (with the exception of the rider relating to the plea of limitation) to raise all other pleas open to them. There will be no order as to costs.