Sk. Kachi Md. Vs Satindra Narayan Baidya and Another

Court: Calcutta High Court

Date of Decision: March 8, 2013

Acts Referred: West Bengal Land Reforms Act, 1955 â€" Section 2(6), 8, 9

Citation: (2013) 2 CALLT 75 : (2013) 3 CHN 528

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: Mrinal Kanta Das and Mr. Tapan Coomaar Dey, for the Appellant; Ram Prakash Banerjee, for the Respondent

Final Decision: Allowed

Judgement

Soumen Sen, J.
The present revisional application is arising out of a judgment of reversal passed by the Additional District Judge, 2nd

court, Burdwan in Misc. Appeal No. 31 of 1993. The dispute relates to Plot No. 11, R.S. Khatian No. 594 of Mouza Abhirampur, P.S.

Ausgram, Chowki, Dist. Burdwan. The entire suit holding was previously owned by one Smt. Nilima Ghosh. The said recorded owner had

transferred different portions of the suit plots to different persons, one of whom was Sri Santi Kumar Raja who purchased 20 cents of suit plot

situated to the north/east corner of the suit-holding. Sri Santi Kumar Raja, thereafter, transferred his 20 cents of suit plot No. 11 by two separate

sale deeds dated 16th October, 1974 and 18th November, 1974 by which 12 cents of land on the western side was sold to Satindra Kumar

Baidya and the rest 8 cents on the contiguous east to the elder brother being the opposite party No. 2 in this proceeding. The said opposite parties

purchased defined demarcated portion in respect of these 8 cents and it is the admitted position that these 8 cents of land were transferred by two

separate sale deeds to the original petitioner, namely, Sk. Kachi Md. and his wife. The said two transfers in respect of 8 cents of land had been the

subject-matter of challenge in two Misc. Cases, namely, Misc. Case Nos. 29 and 31 of 1986. This subsequent sale in favour of the petitioner and

his wife was objected to by Satindra Kumar Baidya claiming that the said opposite party No. 1 being a contiguous owner and a co-sharer of the

suit plot is entitled to pre-emption. At the time of filing of the said misc. case, the opposite party No. 1 deposited Rs. 17,600/- in Court as

consideration-cum-compensation. In the said proceeding, the opposite party No. 1 prays for pre-emption in his favour.

2. The learned 3rd Munsif, Burdwan upon consideration of the evidence held that there is no existence of any such plot number which is claimed to

be contiguous to the suit plot and in absence of proper identification of such plot, no presumption can be drawn in favour of the petitioner. A co-

owner cannot be an adjoining owner in respect of same plot which is not being partitioned. There was no evidence on record to show that any

partition was effected between the parties by metes and bounds inasmuch as no registered deed of partition or any decree of Court showing

partition was filed in the said proceeding.

3. The learned Munsif relied upon Bimal Sadhan Koley Vs. Nikhilesh Koley and Others, in which it has been held that that the pre-emptor not

having deposited the entire consideration money but only the money for a certain portion of land which according to his estimation was the market

value of the plot, his application could not succeed in view of sections 8 and 9 of the Act. The learned Munsif upon consideration of the decision

reported in Madan Mohan Ghosh and Others Vs. Sishu Bala Atta and Others,) in the context of the change in the definition of holding and relying

upon the decision reported in (1990) 2 CLJ 378 (Smt. Damayanti Maity v. Aswini Kumar Jana & Ors.) held that since the concept of holding has

undergone a complete change and in view of such change in definition of holding in section 2(6) of the West Bengal Land Reforms Act, there

cannot be a co-sharer in respect of any holding, as holding constitutes only the land or lands held by a raiyat. The observations made by the

Hon"ble Division Bench in Smt. Damayanti Maity (supra) is reproduced hereinbelow:--

11. Mr. Sahu"s contention was that section 8 of the WBLR Act has given a right to a co-sharer in the holding to pre-empt any transfer made by a

co-sharer raiyat in the holding to a person other than a co-sharer in the same holding. According to Mr. Das this is a right given to the raiyat on the

strength of a substantive provisions made in section 8 of the Act. To take away such a right express provision is required to be made. Since this

has not been done it must be held that the amendment sought to be made did not affect the substantive provision of the WBLR Act. It is true that

since the concept of holding has undergone a complete change there is no question of there being a co-sharer in the holding. Therefore, that part of

section 8 which gives a right of pre-emption made a co-sharer in the holding is negatted. As it appears to us that even after the amendment made in

the definition of holding the legislature thought that there may be cases in which there may be a co-sharer in the holding itself We have already

referred to the definition of land holding appearing in the WBLHR Act. In the assessment of revenue on the land holding itself there may be a co-

sharer being a member of the family of the raiyat. If such a person can be treated as a co-sharer of the holding within the meaning of section 8 is a

question which has to be decided. Mr. Sahu also referred to the case of joint purchase by two or more persons together. We have not dealt with if

these cases are also affected by the amendment in the definition of holding but certainly there may be cases which can be argued to be still covered

by section 8 of the Act. However, the legislature did not consider it necessary to bring in any change in the provisions of section 8. The legislature

is always competent to make such amendment as and when the difficulties and contradiction are brought to this notice. Accordingly, we do not

propose to make a finding that there cannot be any co-sharer in the holding within the meaning of the Land Reforms Act as amended. We do not

do so because that is not the question arising for our consideration in this case.

4. The only submission seems to be that the original petition filed u/s 8 of the West Bengal Land Reforms Act, 1995 is required to be amended in

view of the amendment to section 8 of the West Bengal Land Reforms Act. The learned Counsel refers to section 2(6) of the West Bengal Land

Reforms Act in the context of definition of "holding" and it was submitted that the law of pre-emption has undergone a substantial change in view of

the amendment introduced in the year 2000. In fact, by referring to section 8 of the West Bengal Land Reforms Act which deals with the right of

purchase by co-sharer of contiguous plot, it is submitted that by reason of amendment in 2000 which came into force with retrospective effect from

7th August, 1969 the term ''holding'' has been done away with and a new definition of a co-sharer is inserted in section 2(6) of the said Act. The

word "holding" is replaced by ''plot''. It was contended that the opposite party No. 1 in the appeal claimed to be a co-sharer in the disputed

''holding'' with the original recorded owner and subsequent transferees. The Appellate Court considered if the opposite party No. 1 could claim to

be a co-sharer in the disputed holding with the original recorded owner and subsequent transferees on the basis of materials on record and held

that it does not show that Smt. Nilima Ghosh still retained a portion of the suit-holding jointly with her transferees nor there is any evidence on

record to show that the transferees including the opposite party No. 1 and his brother opposite party No. 2 who is predecessor-in-interest of the

original petitioner in both the Misc. Cases purchased jointly portions of the suit plot whereas it is an admitted position that the opposite party No. 1

purchased a specific demarcated portion measuring 12 cents situated to the western extremity of 20 cents of the said plot from the previous owner

Shanti Kumar Raja and the opposite party No. 2 purchased subsequently 8 cents situated to the contiguous east out of that 20 cents of said plots

from the previous owner Shanti Kumar Raja. The opposite party No. 2 subsequently sold these 8 cents of land in favour of the petitioner and his

wife. In view thereof, the denial of such right on the ground of co-shareship in the disputed property is unsustainable. The learned Appellate Court

affirmed the finding of the learned Munsif with regard to the rejection of the claim based on co-shareship. However, the learned Appellate Court

held that the Munsif had failed to appreciate that the opposite part Nos. 1 and 2 are not co-owners in respect of the disputed properties as

specified demarcated portions of the suit property were purchased from the respective vendors, owners thereof and in view of such admitted

position, there was no requirement for either of the parties to prove any factum of partition in respect of the entire 20 cents of land sold out by the

previous owner Shanti Kumar Raja to the opposite party No. 1 and the opposite party No. 2 and on this score the learned Munsif was wrong.

The learned Appellate Court observed that Bimal Sadhan Koley Vs. Nikhilesh Koley and Others, cannot have any application in the facts and

circumstances of the case. However, the pre-emption was allowed in favour of the opposite party No. 1 on the basis of vicinage. It was held that

the opposite party No. 1 held land contiguous to the west of the disputed property which was applied for preemption and as such the opposite

party No. 1 would be entitled to preempt the disputed property on the ground of vicinage. On the ground of vicinage, an order for pre-emption

should be made in respect of that plot or plots of land which is or are contiguous to the plots of land belonging to the applicant for pre-emption. It

has been submitted that both the applications for pre-emption were filed prior to the amendment of section 8 of the West Bengal Land Reforms

Act and in view of such amendment, ""holding"" of the land has been substituted by the plot of land and thereby a substantial change has been

introduced in the pre-emption law by the said amendment. Thus, Mr. Mrinal Kanti Das, the learned Counsel appearing on behalf of the petitioner

submitted that in the absence of amendment of the pleadings, the application for pre-emption as it stands is not maintainable.

5. Mr. Das has relied upon the unreported decisions, namely, W.P.L.R.T. No. 92 of 2003 (Sri Ranjit Kumar Dey v. Sri Anadi Bhusan Pal) dated

26th September, 2006 and C.O. 226 of 1999 (Parvin Upadhyay v. Tilak Dhari Singh & Ors.).

6. In Ranjit Kumar Dey (supra), the Hon''ble Division Bench after going through the materials on record found that during the pendency of the

matter in question, the law was changed and the amendment came into force with retrospective effect from 7th August, 1969. The suit was

dismissed which, however, was reversed by the Appellate Court on the ground of change of law, the said order of the Appellate Court was

affirmed by the learned Land Tribunal without taking into account that the plaint was not amended in accordance with the present law which has

been amended u/s 8 of the said Act and furthermore without giving a chance of hearing to the petitioners, the Appellate Court as well as the

learned Tribunal allowed the prayer of the respondent which the Hon''ble Division Bench found to be in violation of the principles of natural justice.

The Hon''ble Division Bench in view of the change of law directed the learned Munsif to hear out suit after permitting the plaintiff to amend the

plaint and gave an opportunity to the defendant to file their additional written statement in the said proceeding. The Munsif was directed to hear the

suit afresh.

7. In Parvin Upadhyay (supra), the learned Single Judge after taking into consideration the change of law and amendment brought in the year 2000

with regard to the definition of ""holding"" held that in the interest of justice in matters may be referred back to the learned Trial Judge for fresh

appraisal of the matter in the backdrop of the change brought about by such amendment.

8. The learned Counsel for the opposite party, however, submitted that though the amendment had not taken place but the fact remains that both

the Courts below had proceeded on the basis as if the amendment had taken place and in any event, section 8 even before amendment permits any

raiyat possessing land adjoining such plot of land to exercise right of pre-emption on the ground of vicinage and the law is well-settled on this point.

9. It is true that the Appellate Court had substantially affirmed the judgment of the Trial Court but permitted pre-emption on the ground of vicinage.

The claim on the ground of vicinage appears to have been mentioned in the pleading before the Trial Court. The Munsif did not consider it

necessary in view of the other findings being arrived at the trial. However, in considering the fact that there is a change of law, liberty is given to the

plaintiff to amend the said application. Such application for amendment shall be filed within three weeks from date. Defendant shall be permitted to

file additional written statement within three weeks from the date of service of the amended plaint. The learned Court below shall make all effort to

dispose of the application filed u/s 8 of the West Bengal Land Reforms Act, 1955 preferably within a period of 15 months from the date of

completion of pleadings. The parties would be permitted to lead evidence only to the extent that might be required in view of the amendment

introduced by the Amendment Act of 2000 and all other evidence on record touching and/or concerning the issue on which the Trial Court as well

as the Appellate Court had already dealt with would remain and considered at the time of disposal of the suit. The evidence shall be limited to the

pleadings to be introduced by way of amendment consequent upon the introduction of the West Bengal Land Reforms Amendment Act, 2000. In

view thereof, the revisional application succeeds. However, there shall be no order as to costs.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

Later:

The department is directed to send down the Lower Court Records immediately so as to enable the Trial Court to proceed with the matter.