

Kumkum @ Esrat Begum Vs Munshi Abul Kasem Nuruddin

Court: Calcutta High Court

Date of Decision: Dec. 5, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151
West Bengal Land Reforms Act, 1955 â€” Section 14M, 5, 8, 8(1), 9

Citation: (2013) 1 CALLT 422 : (2013) 2 CHN 48

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: Jiban Ratan Chatterjee and Shila Sarkar, for the Appellant; Anjan Bhattacharyya, for the Respondent

Judgement

Soumen Sen, J.

The present revisional application is arising out an order dated 27th March, 2012 passed by the Civil Judge (Junior Division), 1st Court, Arambagh in connection with Misc. Case No. 33 of 2009. The petitioner is the pre-emptor. The petitioner filed an application

u/s 8 of the West Bengal Land Reforms Act against the pre-emptees/opposite parties praying, inter alia, for decree for pre-emption in respect of

the property sold in favour of the pre-emptee/defendant No. 1 by a deed of conveyance for determination of consideration money and other

reliefs. In the said application it was alleged by the petitioner that with a view to deprive the petitioner from making a claim for pre-emption, the

transferor and the transferee have purposely and motivatedly inflated the price of the said property on a complete misrepresentation of the share of

the opposite party No. 2 in respect of the said property. The value of the share of the opposite party No. 2 would not exceed more than Rs.

50,000/- and, accordingly, the consideration amount shown in the said deed of conveyance is not the actual consideration amount that is required

to be paid for such transfer. During the pendency of the aforesaid application, the opposite party No. 1 made an application u/s 9 of the West

Bengal Land Reforms Act, 1955, inter alia, praying for determination of actual consideration amount in respect of the said transaction. It is

contended that the evidence in connection with the petition filed u/s 9 of the West Bengal Reforms Act, 1955 has been concluded and the matter is

fixed for argument. During the pendency of the said application, an application was filed by the petitioner u/s 151 of the CPC for hearing of the

petition u/s 9 of the West Bengal Land Reforms Act along with the application u/s 8 of the said Act, the reason being made, that in the application

filed by the opposite party No. 1 a dispute has been raised regarding the consideration money and such issue is required to be decided along with

the application filed u/s 8 of the West Bengal Land Reforms Act. After considering the rival contention, the learned Civil Judge held that without

depositing the consideration money together with a further sum of 10 percent of that amount, the hearing of the application u/s 8 of the West

Bengal Land Reforms Act, 1955 cannot be claimed. The learned Court below has relied upon the decision reported in In Re: Smt. Namita Biswas,

2. In order to appreciate the rival contention it would be useful to consider sections 8 and 9 of the West Bengal Land Reforms Act, 1955, the

relevant observations whereof are reproduced hereinbelow:--

8. Right of purchase by co-sharer or contiguous tenant.--(1) If a portion or share of a plot of land of a raiyat is transferred to any person other than

a co-sharer of a raiyat in the plot of land, the bargadar in the plot of land may, within three months of the date of such transfer, or any co-sharer of

a raiyat in the plot of land may, within three months of the service of the notice given under subsection (5) of section 5, or any raiyat possessing

land adjoining such plot of land, may, within four months of the of such transfer, apply to the Munsif having territorial jurisdiction for transfer of the

said portion or share of the plot of land to him, subject to the limit mentioned in section 14M, on deposit of the consideration money together with

a further sum of ten percent of that amount.

9. Munsif to allow the application and apportion lands in certain cases.--(1) On the deposit mentioned in sub-section (1) of section 8 being made,

the Munsif shall give notice of the application to the transferee, and shall also cause a notice to be affixed on the land for the information of persons

interested. On such notice being served, the transferee or any person interested may appear within the time specified in the notice and prove the

consideration money paid for the transfer and other sums, if any, properly paid by him in respect of the lands including any sum paid for annulling

encumbrances created prior to the date of transfer, and rent or revenue, cesses or taxes for any period. The Munsif may after such enquiry as he

considers necessary direct the applicant to deposit such further sum, if any, within the time specified by him and on such sum being deposited, he

shall make an order that the amount of the consideration money together with such other sums as are proved to have been paid by the transferee

or the person interested plus ten percent of the consideration money be paid to the transferee or the person interested out of the money in deposit,

the remainder, if any, being refunded to the applicant. The Munsif shall then make a further order that the portion of share of the plot of land be

transferred to the applicant and on such order being made, the portion or share of the plot of land shall vest in the applicant.

3. On a conjoint reading of the said provisions it appears that section 9 makes provision for the proof of actual amount of consideration paid by the

transferee for the transfer in their favour along with other sums and also requires an enquiry to be made in order to ascertain the truth and

correctness of such assertion which is to be determined by the Munsif and ultimately it may result in a direction being passed by him for deposit of

further sum, if any, within such time as may be specified therefor by him. The requirement of proof would arise in case of pre-emptors disputing the

consideration amount.

4. Section 9 provides an elaborate procedure after a deposit is made in terms of sub-section (1) of section 8 for the benefit of the transferee or any

person interested so that they may appear within the time specified in the notice and prove consideration amount paid for the transfer and other

sums, if any, properly paid by him in respect of the amounts including any sum paid for annulling encumbrances created prior to the date of

transfer, the rent or revenue, cesses or taxes for any period. At the stage of an enquiry u/s 9, the Court is not required to go into the merits of the

dispute but is required to confine its enquiry as to the actual amount required to be deposited u/s 8(1) before the said application can be finally

adjudicated.

5. Such transfer is to be made by a registered instrument and the said document would be not be accepted by the Registering Officer unless the

sale price or where there is no sale price the value of the plot of land or portion or share thereof transferred stated therein and such document is

required to be tendered along with a notice giving the particulars of the transfer in the prescribed form for transmission to the prescribed authority

along with such notices and process fees as may be required under the statute. It is, thus, presumed when a deed is registered by the registering

authority, the registering authority would not permit such registration unless the registering authority is satisfied with the value of the share of the

transferee in the property or the value of the property as the case may be.

6. However, at the time of filing an application u/s 8 of the West Bengal Land Reforms Act, 1955 any short deposit would not automatically result

in dismissal of the said application in view of the law laid down in the following decisions:--

i) Sahid Ali Vs. S.K. Abul Kasem,

ii) 1986(1) CLJ 170 (Para-8) (Sadhan Chandra Samanta vs. Jaladhibala Das & Anr.);

iii) Bimal Sadhan Koley Vs. Nikhilesh Koley and Others,

iv) An unreported judgment in C.O. 1289 of 2008 with C.O. 1291 of 2008 (Kaustubh Mondal vs. Barasat Eye Hospital represented by Shri

Debabrata Das & Ors.) dated 18th June, 2008;

v) An unreported judgment in C.O. 2226 of 2011 (Devdas Haider vs. Sankar Biswas & Anr.) dated 28th August, 2012.

7. In the instant case, since the application filed u/s 9 of the West Bengal Land Reforms Act, 1955 is at the argument stage, the learned Civil

Judge, Junior Division, is directed to dispose of the said application only for the purpose of determining the amount of the actual consideration

money paid for such transfer and other sums if any and enquire into the truth and correctness of such assertion and in the event it is found that there

is a short deposit, the learned Civil Judge, Junior Division shall pass an appropriate order with regard to deposit of the balance consideration

amount together with interest as required u/s 8(1) of the said Act before deciding the said application u/s 8 of the West Bengal Land Reforms Act,

1955 on merits. In the light of the aforesaid discussion this Court finds no reason to interfere with the order passed by the learned Civil Judge

(Junior Division), 1st Court, Arambagh in rejecting the application filed u/s 151 of the Code of Civil Procedure. However, the said learned Judge is

directed to dispose of the said application u/s 9 of the said Act as expeditiously as possible without granting any unnecessary adjournments to

either of the parties. The hearing of the application u/s 8 shall remain stayed until the application filed u/s 9 is disposed of and it is the desire of the

Court that the learned Judge shall make all endeavour to dispose of the said application filed u/s 9 of the said Act preferably within a period of 4

months from the date of communication of this order without granting any unnecessary adjournments to either of the parties.

8. The revisional application is, thus, disposed of. 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.