

Nandarani Bhandari and Others Vs Pratima Bhandari and Others

Court: Calcutta High Court

Date of Decision: Aug. 26, 2004

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 26 Rule 9, 151

Constitution of India, 1950 â€” Article 227

West Bengal Land Reforms Act, 1955 â€” Section 8, 9

Citation: (2005) 4 CHN 530

Hon'ble Judges: Tapan Kumar Dutt, J

Bench: Single Bench

Advocate: Mrinal Kanti Das, Tapas Kr. Adak, Ashoke Kr. Majumdar, Bhudeb Chatterjee and Ranjit Sanyal, for the Appellant; Partha Dutta and Madhusudan Roy, for the Respondent

Final Decision: Allowed

Judgement

Tapan Kumar Dutt, J.

I have heard the learned Advocates appearing on behalf of the respective parties.

2. The facts, very briefly, are as follows :

The petitioner filed an application for pre-emption under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 being Miscellaneous Case

No. 25 of 1998 against the opposite parties praying, inter alia, for an order of pre-emption in respect of the disputed property sold by the opposite

party No. 2 to the opposite party No. 1 by a Deed of Conveyance dated 21.09.1998. The disputed property is a land measuring two sataks along

with other alleged rights and privileges. The petitioners have alleged that the opposite party No. 2 out of his holding sold two sataks of land to the

opposite party No. 1 by a registered Deed of Conveyance dated 21.09.1998 and that the petitioners are the owners of the land contiguous South

to the disputed property and are entitled to pre-emption of the ground of his vicinage. That the Opposite Party Nos. 1 and 2 filed written statement

in the said proceeding alleging, inter alia, that though there was a Deed of Partition it cannot be said that there was partition by metes and bounds

i.e. by measurement among the co-sharers and it cannot be said that the petitioners are the contiguous owners. That the opposite parties further

alleged that the description of the property given in the schedule to the application for pre-emption is vague and indefinite.

3. That in the said proceeding the petitioners filed an application under Order 26 Rule 9 read with Section 151 of the CPC praying for

appointment of survey passed Advocate local investigation Commissioner in respect of the points mentioned in the schedule to the said application.

The petitioners stated in the said application that the opposite parties in their written objection against the application for pre-emption have

disputed the schedule of the application for pre-emption and to elucidate the matter in dispute and also to ascertain the boundary of the petitioners

and to bring a true picture before the learned Court a local investigation commission is required to be held. That the opposite party filed an

objection to the said application for local investigation. That by order dated 3.4.2001 the learned Trial Court allowed the application under Order

26 Rule 9 CPC by holding inter alia, that from the written objection filed by the opposite parties it appears that they have denied the petitioners"

claim for pre-emption on the ground of vicinage, that from the xerox copy of the Deed of Partition it appears that there has been a partition of plot

No. 511 and at this stage it cannot be determined whether the Deed is a partition or not and to bring a true picture and also for proper

adjudication of the dispute involved in the case the petition for local investigation should be allowed.

4. That challenging the said order dated 3.4.2001 the opposite parties filed Civil Revision Case No. 75 of 2001 in the Court of learned District

Judge, Birbhum, Suri. That the said civil revision case was contested by the petitioners. That by order dated 11.4.2002 the learned Judge allowed

the said civil revision case and set aside the order dated 3.4.2001. The learned Judge found, inter alia, that the onus rests upon the petitioners to

show that they are land owners contiguous to the disputed property and in a pre-emption application local investigation is redundant. The learned

Judge further held that the learned Trial Court without considering the gravity of the case and exceeding his jurisdiction allowed the petitioners"

prayer for local investigation which is not sustainable in law and as such the learned Trial Court's order is liable to be set aside.

5. After hearing the learned Advocates for the respective parties it appears that there is a dispute as regards the description of the property in

dispute as described by the petitioners in their application for pre-emption. In the written objection to the application for pre-emption the opposite

parties have also alleged that the description of the property as given in the schedule of the application for pre-emption is vague and indefinite.

6. Mr. Das, learned Advocate appearing on behalf of the petitioner submitted that the Opposite Party No. 2 sold 2 decimals of land to the

Opposite Party No. 1 by a certain Deed of Conveyance but in the said deed the northern boundary has been shown to be a "kuchha" road of the

concerned Panchayat. According to Mr. Das, learned Advocate, 2 decimals of land situated on the northern side of the present property in dispute

had already been sold by the Opposite Party No. 2 to some other persons and in such deed the northern side boundary has also been shown to be

the "kuchha" road of the concerned Panchayat. According to Mr. Das the sale deeds executed by the opposite party No. 2 have created much

confusion and it is necessary that the identity of the property should be properly established. According to Mr. Das the opposite parties have

themselves disputed the description of the property given in the schedule of the application for pre-emption and have alleged that such description

is vague and indefinite. According to Mr. Das it is necessary that a proper local investigation should be made and the identity of the property in

dispute should be established and such local investigation is necessary for proper, effective and complete adjudication of the dispute between the

parties.

7. Mr. Das further submitted that no Court can grant a relief in respect of a vague and unidentifiable property and that it is always fit and proper to

have the identity of the property properly established for effective adjudication of a case. Mr. Das in this connection cited a decision reported at

1997 (2) CLJ 391 , Mahendranath Parida Vs. Purnananda Parida and Others, , Mahendranath Parida v. Purnananda Parida and Ors., for his

submission that when there is a controversy as regards the identification and location of the land investigation should be done at an early stage so

that the parties may be aware of the report that may be submitted by the learned Commissioner and the parties may go to trial fully prepared.

8. Mr. Partha Dutta, learned Advocate, appearing on behalf of the opposite parties submitted that by making the application for local investigation

the petitioner has attempted to fish out evidence. Mr. Dutta, learned Advocate, cited a decision reported at AIR 1978 Cat. 296, Institution of

Engineers (India) and Anr. v. Bishnu, Pada Bag and Anr., and also a decision reported at 1996 WBLR (Cal.) 23, Satish Agarwal and Ors. v.

Tirath Singh, in support of his submission that a party should not be allowed to fish out evidence.

9. After having heard the parties it appears to me that in the instant case the petitioner is not really fishing out any evidence. In my view it is

necessary that the identity of the property in dispute should be clearly established and there should be no ambiguity in respect of the property in

dispute. Since the opposite parties themselves have raised a dispute with regard to the description of the property it is only fit and proper that a

local investigation should be held as prayed for by the petitioner. The learned Trial Court has rightly held that in order to bring a true picture and

also for proper adjudication of the dispute involved in the case the local investigation is necessary. In the facts and circumstances of the instant

case, allowing the application for local investigation does not mean that any party is being allowed to fill up any lacuna. In my view, the learned

District Judge, Birbhum, Suri fell into error in holding that in a pre-emption application local investigation is redundant. In my view, the learned Civil

Judge (Junior Division), Sadar, Suri did not commit any jurisdictional error in allowing the petitioner's application for local investigation and it

cannot be said that the order passed by the learned Civil Judge (Junior Division), Sadar, Suri is not sustainable in law. It appears that the learned

District Judge, Birbhum, Suri did not really go into the question as to why the application for local investigation was made by the petitioner but

erroneously proceeded on the basis that in a pre-emption application local investigation is redundant.

10. In view of what I have discussed above I am inclined to set aside the impugned order as it suffers from illegality and material irregularity. The

impugned order is thus set aside and the application under Article 227 of the Constitution of India is allowed. There will, however, be no order as

to costs.

11. Urgent xerox certified copy of this order, if applied for by the parties, be made available to the parties as expeditiously as possible.