

(2011) 11 CAL CK 0047

Calcutta High Court

Case No: C.O. No. 266 of 2006

Swapan Kumar Sen

APPELLANT

Vs

Asit Kumar Mondal and
Others

RESPONDENT

Date of Decision: Nov. 14, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 11 Rule 1, Order 11 Rule 4, Order 14 Rule 2, 115, 115A
- West Bengal Land Reforms (Amendment) Act, 1972 - Section 7
- West Bengal Land Reforms Act, 1955 - Section 10, 5(5), 8, 9
- West Bengal Premises Tenancy Act, 1956 - Section 26F

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Advocate: Prabal Mukherjee and Mr. Sukanta Chakraborty, for the Appellant; Sourav Sen, for the Respondent

Final Decision: Allowed

Judgement

Harish Tandon, J.

This revisional application is directed against an order No.108 dated 12.09.2003 passed by learned Civil Judge, (Junior Division) First Court, at Howrah in L.R Miscellaneous Case No.8 of 1992 by which an application for amendment of the original application was allowed.

2. The opposite party No.1 being the co-sharer of the adjoining plot, prayed for the decree for preemption u/s 8 of the West Bengal Land Reforms Act which was registered as Miscellaneous Case No.8 of 1992 before the learned Civil Judge (Junior Division) First Court, Howrah. It is alleged in the said original application that the mother of the petitioner as well as proforma opposite party No.4 to 10 namely Sabitri Mondal, was the original owner of Plot No.17171 comprising more less 3 cottah and 6 chattaks 26 sq. ft. on the

basis of the registered deed of sale dated 1st April, 1970. Upon her death the petitioner and the other proforma opposite parties became the joint owners by virtue of inheritance. The total area of land comprised in the said plot was 87 decimal. It is alleged that the opposite party No.2 and 3 who were the owner to the extent of 2 cottah 5 chataks transferred and conveyed the said plot of land to the petitioner herein on the strength of deed dated 16.12.1991. It is lastly alleged that being one of the co-sharer of the adjoining land the opposite party No.1 has right to claim preemption u/s 8 of the West Bengal Land Reforms Act.

3. The petitioner took defence in the said preemption proceeding that prior to the institutions of the instant application, the opposite party No.1 and 2 instituted title suit No.18 of 1992 against the petitioner seeking declaration that the sale deed dated 16.12.1991 is illegal, void and is liable to be cancelled and delivered up. The said title suit was ended in compromise on 16.03.1992 by virtue whereof the sale deed dated 16.12.1991 was declared illegal and void.

4. On the strength of the above noted facts, the petitioner filed an application under Order 14 Rule 2 of the CPC for framing a preliminary issue which was eventually rejected by the trial court.

5. After the preemption of evidence, several applications were taken out by the opposite party No.1 including an application under Order 11 Rule 1 and Rule 4 of the CPC which was ultimately rejected by the trial court.

6. On the day when the further evidence of the opposite party No.1 was fixed an application for amendment was taken out by which the opposite party No.1 seeks to incorporate the facts relating to the aforesaid compromise decree being collusive, manufactured, void and is not binding upon the opposite party No.1. Although, the petitioner vehemently opposed the said application for amendment but the trial court allowed the said application.

7. Challenging the said order the petitioner filed a revisional application before the Additional District Judge, First Court, Howrah u/s 115 A of the CPC which was registered as C.R No.111 of 2003. The said revisional application ultimately came up for final disposal of 09.09.2005 and was allowed, as a consequence whereof, the said order by which an application for amendment was allowed, was rejected.

8. The opposite party No.1, thereafter, assailed the said order passed by the first revisional court before this Hon"ble Court in C.O 3679 of 2005 which was allowed on 19.12.2005. It is observed in the said order that during the pendency of the said revisional application, an amendment is brought to the code of civil procedure, more particularly u/s 115 thereof, by which certain parameters are laid for entertaining an application u/s 115 and 115A of the Code. Thus, it was held that the order passed by the first revisional court is not sustainable. However, liberty was given to the petitioner to challenge the said order

before the appropriate forum.

9. On the strength of the said observation, the present revisional application is filed challenging the said order by which an application for amendment is allowed.

10. A point has been taken by Mr. Prabal Mukherjee, learned Advocate appearing for the petitioner that the Munsif i.e. Civil Judge, Junior Division, has been vested with the limited power u/s 8 of the West Bengal Land Reforms Act which cannot be enlarged by allowing application for amendment. Thus, he contends that the court is not vested with the power to make a declaration that the deed or decree of the court is illegal, void and is not binding upon the parties in a proceeding under the said act.

11. Mr Sourav Sen, the learned Advocate appearing for the opposite party opposes the submission in contending that the court is not powerless to decide whether the transaction is genuine or not and can declare such transaction to be illegal by placing reliance upon the judgement of this Court in Case of [Tarapada Karati Vs. Sudhamoy Dolui and Others](#) , [Nishikanta Das Vs. Jnanendra Nath Mondal and Others](#), Sk Hossain Ali and another Vrs. Kalachand Ghosh (Gope), and Ors. reported in another 51 CWN 415 and [Surujmal Keshan Vs. Baliram Prosad Shah and Others](#) and judgement of the supreme court in case of [Shaikh Abdul Azees Vs. State of Karnataka](#),

12. Having heard the respective submissions, the point that emerges for consideration is whether the court dealing a matter u/s 8 of the West Bengal Land Reforms Act can declare any transaction or a decree passed prior to the impugned transaction, to be illegal and void and/or not binding upon the parties to the proceeding.

13. Before dealing with such aspect, it would be profitable to quote Section 8 of the West Bengal Land Reforms Act 1955 which reads thus:-

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 sub-section (5) of section 5, or any raiyat possessing land adjoining such plot of land, may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction for transfer of the said portion or share of the plot of and to him, subject to the limit mentioned in section 14M, on deposit of the consideration money together with a further sum of ten per cent of that amount:

Provided that if the bargadar in the plot of land, a co-sharer of a raiyat in a plot of land and a raiyat possessing land adjoining such plot of land apply for such transfer, the bargadar shall have the prior right to have such portion or share of the plot of land transferred to him, and in such a case, the deposit made by others shall be refunded to them:

Provided further that where the bargadar does not apply for such transfer and a co-sharer of a raiyat in a plot of a land and a raiyat possessing land adjoining such plot of land both apply for such transfer, the former shall have the prior right to have such portion or share of the plot of land transferred to him, and in such a case, the deposit made by the latter shall be refunded to him:

Provided also that as amongst raiyats possessing lands adjoining such plot of land preference shall be given to the raiyat having the longest common boundary with the land transferred.

(2) Nothing in this section shall apply to-

(a) a transfer by exchange or by partition, or

(b) a transfer by bequest or gift or heba-bill-ewaz, or

(c) a mortgage mentioned in section 7, or

(d) a transfer for charitable or religious purposes or both without reservation of any pecuniary benefit for any individual, or

(e) a transfer of land in favour of a bargadar, in respect of such land if after such transfer, the transferee holds as a raiyat land not exceeding one acre or 0.4047 hectare in area in the aggregate. Explanation.- All orders passed and the consequences thereof under sections 8, 9 and 10 shall be subject to the provisions of Chapter IIB.

(3) Every application pending before a Revenue Officer at the commencement of Section 7 of the West Bengal Land Reforms (Amendment) Act, 1972 (West Bengal Act XII of 1972) shall, on such commencement, stand transferred to, and be disposed of by, the Munsif having jurisdiction in relation to the area in which the land is situated and on such transfer every such application shall be dealt with from the stage at which it was so transferred and shall be disposed of in accordance with the provisions of this Act, as amended by the West Bengal Land Reforms (Amendment) Act, 1972.

14. Admittedly, the application under the said aforesaid provision is founded on the basis of the deed of sale dated 16.12.1991. The Opposite Party No.1 has assailed the right to preempt u/s 8 of the said act as a co-sharer of the adjoining plot of land. The said sale deed dated 16.12.1991 has been declared illegal, in-operative and void on the strength of compromise decree passed in title suit 18 of 1992. The said compromise decree has not been assailed and/or challenged by any of the parties to the said suit.

15. What is tried to be achieved by the opposite party No.1 by the proposed amendment is the declaration in a preemption proceeding that the said compromise decree is illegal, collusive, manufactured and is not binding upon the opposite party No.1. Obviously, the reason behind such attempt is to make the said transfer invalid to sustain the said

preemption proceeding.

16. The court exercising power u/s 8 of the said act is for limited purpose. Precisely, it is because of that the words " Munsif Heaving Territorial Jurisdiction" is used. Thus the power vested upon the court to deal the matter covering the said provision is in respect of the subject property situated within the territorial jurisdiction irrespective of its pecuniary value. Even though the pecuniary value of the transfer being the foundation to invoke the said provision exceeds pecuniary jurisdiction of the Munsif, the Munsif for the limited purpose as enshrined u/s 8 of the Said Act is competent to entertain the said application.

17. The Munsif as appointed under the said Act is not personal designata but has trappings of a court. The power so exercise is on the strength of the said provision. Under the Bengal, Asam and Agra Civil Court Acts, the Munsif, or Civil Judge(Junior Division) has been blessed with the pecuniary jurisdiction up to Rs.60,000/- and is thus denuded of its power to deal any subject matter exceeding the pecuniary limits subject of course to the special power conferred by a statute.

18. It is no doubt true that while dealing with the preemption proceeding the Munsif, can for limited purpose go into the genuinity and authenticity as well as the nature of the transaction upon which such proceeding is founded upon, but cannot embark to declare any decree of the competent civil court or any transactions or deeds entered into and/or executed prior to the said transaction and/or deed upon which the preemption is claimed, u/s 8 of the West Bengal Land Reforms Act.

19. In other words, the court under the said statute cannot declare the transactions or deeds or the order of the competent civil court to be illegal, void, collusive and manufactured.

20. In case of Aniruddha (supra), the point in issue was whether the transaction between the parties was an absolute sale or mortgage by conditional sale. In such perspective, the court in a preemption proceeding decided an issue for the purpose of the granting reliefs u/s 26F of the West Bengal Tenancy Act.

21. In case of Nishikanta Das (supra), the Division Bench of this court was also poised with a question whether the transaction between the parties given in the form of a sale is really a mortgage or not. Same question was also involved in case of Hossain Ali (supra) where this court while upholding that the court can decide the genuinity of the transaction or the nature of the transaction, held that if it involved a completed question of title, the court would be advised in relegating the parties to a regular suit.

22. However, in Santisila Dasi (supra) it is held that if the question of benami is raised, the court is not powerless to decide the same.

23. What emerges from the ratio decided in the above noted reports is that the court is not denuded of its jurisdiction to decide the nature of the transaction in a preemption

proceeding, but it does not vest the power upon the court to pass a Declaratory decree where a complexity of title is involved. By the proposed amendment, the decree of the competent Civil Court, is sought to be declared in operative, collusive and manufactured in a preemption proceeding pending before the Munsif having territorial jurisdiction which, in my considered opinion, is not permissible.

24. Therefore, the order impugned is not sustainable and is hereby set aside. Consequently, the application for amendment is rejected.

25. The revisional application is allowed. There shall, however, be no order as to costs.

26. The trial court is requested to make all efforts to dispose of the proceeding as expeditiously as possible without granting unnecessary adjournments to either all the parties.

27. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.