
(1985) 07 CAL CK 0020

Calcutta High Court

Case No: Co. No. 2225 of 1981

Debendra Nath Karak

APPELLANT

Vs

Rekha Pal and Another

RESPONDENT

Date of Decision: July 31, 1985

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- West Bengal Land Reforms Act, 1955 - Section 2, 2(6), 8

Citation: 90 CWN 22

Hon'ble Judges: M.M. Dutt, J; J.N. Chaudhuri, J

Bench: Division Bench

Advocate: Saktinath Mukherjee, D.P. Mukherjee and K. Bhattacharjee, for the Appellant; R.N. Mitra and Uma Sanyal, for the Respondent

Judgement

M.M. Dutt, J.

These revisional applications u/s 115 of the CPC filed at the instance of one Debendra Nath Karak, is directed against the order dated April 23, 1984 of the 6th Court of the Additional District. Judge, Midnapore passed in Misc. Appeals Nos. 146 147 and 148 of 1983, affirming the order no. 15 dated August 1, 1983 of the learned Munsif, 3rd Court, Tamruk, passed in J. Misc. Cases Nos. 52, 53 and 54 of 1982, dismissing the application of the petitioner for pre-emption u/s 8 of the West Bengal Land Reforms Act, 1955, hereinafter referred to as the Act. The disputed plot being R S. Plot No. 1918. of Khatian No. 232/1 of Mouza Pikepari, within P. S. Panshkura, in the district of Midnapore belonged to one Prolhad and his three brothers, Sartosh, Rajendra and Nemai. On July 5, 1956, by a deed of sale Prolhad and his three brothers transferred the said plot to one Becharam Pal. Thus Becharam acquired an exclusive title to the said plot. By a deed of gift dated May 5, 1978 Becharam gifted the said plot to his three sons, namely, Saiya. Sourerdra and Prodyut in equal 1/3rd shares. Thereafter, the said three sons of Becharam transferred by way of said the said plot to the opposite party no 1. Sm. Rekha Pal, by three deeds of sale on

February 8, 1982. The sale deeds executed by Satya and Sourendra were registered on May 25, 1982 while that executed by Prodyut was registered on May 27, 1982. Thus the opposite party no. 1 acquired exclusive title to the said plot by purchase of the same by the said three sale deeds.

2. On September-24, 1982 the petitioner, Debendra Nath Karak. made an application for pre-emption in respect of the said plot u/s 8 of the Act in the 3rd Court of the Munsif, Tamluk alleging that he was a raiyat possessing land adjoining the disputed plot. The application was opposed by the opposite party no. 1 alleging that it was not maintainable. It was contended on behalf of the opposite party no. 1 that after the West Bengal Estates Acquisition Act, 1953 had come into force. Preload any his three brothers became each a tenant of the State of West Bengal in respect of their respective 1/3rd shares in the disputed land. In other words the interest of each of the said three brothers constituted a holding within the meaning of the Act. All these holding having been transferred to Becharam Pal the father of the vendors of the opposite party no. 1, constituted one holding in the hands of Becharam. After the disputed plot was gifted by Becharam to his three sons, the vendors of the opposite party no. 1, they jointly held the holding and thereafter, transferred the entire holding to the opposite party no. 1. It was, accordingly, submitted on behalf of the opposite party no. 1 that as the entire holding was transferred to the opposite party no. 1 and not a portion or share thereof, the provision of section 8 of the Act was inapplicable and the petitioner was not entitled to pre-empt.

3. The learned Munsif upheld the above contention of the opposite party no. 1 and dismissed the application for pre-emption. On appeal by the petitioner, the learned District Judge took the same view as that of the learned Munsif and dismissed the appeal, Hence these revisional applications.

4. The principal question that, is involved in these applications is whether the disputed plot of land constituted a holding of Becharam Pal or his sons. Initially, the word "holding" was defined in section 2(6) of the Act as meaning the land or lands held by a raiyat and treated as a unit for assessment of revenue. If this definition had been in force, there would have been no difficulty to uphold the contention of the opposite party no. 1 that the disputed land constituted the entire holding and as such, the application for pre-emption was not maintainable. This definition of holding was, however, amended by section 26(1) (a) of the West Bengal Land Holding Revenue Act, 1979. Section 26(1) (a) of the said Act provides as follows:

26(1). With effect from the date of coming into force of this Act in any district, the following amendment to the West Bengal Land Reforms Act, 1955, shall be deemed to have been made

(a) in clause (b) of section 2, the words "and treated as a unit for assessment of revenue be omitted.

5. The said Act came into force with effect from April 14, 1981, that is, before the date of transfer of the disputed plot by the vendors of the opposite party no. 1. In view of the amendment made by the said Act, the definition of the word "holding" in section 2(6) will be read as meaning the land or lands held by a raiyat. The effect of the amendment is that whether the land or lands held by a raiyat can be treated as a unit for assessment of revenue or not, such land or lands will constitute" a holding. As for instance, a raiyat may have lands in different districts in West Bengal. All his lands taken together will constitute a holding. Needless to say, all these lands cannot be treated a unit for assessment. So, after the Act came into force, Becharam had other lands besides the disputed land. In view of the amendment, the disputed plot alone did not constitute a holding but all the lands of Becharam taken together would constitute a holding. In the Courts below, the amended definition was not at all adverted to. It is not disputed that Becharam had other plots of land besides the disputed plot. In view of the amended definition of holding it must be held that the disputed plot constituted only a portion of the holding of Becharam, and, accordingly, the application for pre-emption was quite maintainable. As has been pointed out before, the Courts below overlooked the amended definition of the word " holding", and they proceeded on the basis of the unlamented definition of that word.

6. It is, however, submitted by Rabindra Nath Mitter, learned Advocate appearing on behalf of the opposite party No.1 that the amendment of the definition Of holding" as contained in Sec. 2(6) of the Act was for the purpose of the West Bengal Land Holding Revenue Act, 1979 and not for the purpose of the Act with which we are concerned. We are unable to accept this contention. The West Bengal Land Holding Revenue Act, in amending the definition of holding" has not provided that such amendment is only for the purpose of West Bengal Land Holding Revenue Act. In the absence of any such provision, it is difficult to accept the contention made on behalf of the opposite part No. 1. The contention is, therefore, rejected. No other point has been urged in these applications.

7. For the reasons aforesaid, the orders of both the Courts below are set aside and the applications for pre-emption are allowed. These revisional applications, consequently, succeed and are allowed. There will, however, be no order for costs in any of the applications.

The prayer for stay of operation of this order is disallowed.

J.N. Chaudhuri, J.

I agree.