(2011) 07 CAL CK 0070

Calcutta High Court

Case No: C.O. No. 2777 of 2008

Sribas Chandra Biswas and Others		APPELLANT
	Vs	
Jiban Krishna Biswas		RESPONDENT

Date of Decision: July 4, 2011

Acts Referred:

- Registration Act, 1908 - Section 61
- West Bengal Land Reforms (Amendment) Act, 2000 - Section 2(10), 2(6), 30
- West Bengal Land Reforms Act, 1955 - Section 14, 14M, 8, 8(1)

Citation: (2012) 4 CHN 148

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Tapabrata Chakraborty and Subrata Biswas, for the Appellant;S.K. Kundu and Saptarshi Kundu, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.
This application is directed against the order dated April 28, 2008 passed by the learned Additional District Judge, Fast Track Court-II, Ranaghat in Misc. Appeal No. 14 of 2002 thereby dismissing the said misc. appeal on contest.

2. The opposite party filed an application u/s 8 of the West Bengal Land Reforms Act, 1955 for pre-emption against the Petitioners in respect of the lands in case on the ground of vicinage and co-sharership and that application was converted into a misc. case being Misc. Case No. 99 of 1991. According to the application, the lands in case originally belonged to Kalipada Santra and his two sons, namely, Narendra Nath Santra and Joydeb Santra. After death of Kalipada Santra, the two sons inherited the lands in case. The opposite parties purchased Schedule ''A'' lands from Joydeb Santra and the heirs of Narendra Nath Santra by a registered deed of sale

dated June 6, 1991. The Petitioner as a co-sharer of the entire Schedule ''A'' lands has filed the said misc. case for pre-emption. He has also contended that he has lands adjoining to the lands in case as described in Schedule ''B'' to the plaint. The Petitioners herein are strangers to the lands in case. So, the opposite party has filed the pre-emption case. Both the courts below have came to the concurrent findings that the opposite party is entitled to pre-emption. Being aggrieved by the order of the Lower Appellate Court, the Petitioners have filed this revisional application.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that there in no dispute over purchase of Schedule ''A'' land by the Petitioners from Joydeb Santra and the heirs of Narendra Nath Santra by a deed dated July 5, 1983 and the said deed was registered on June 6, 1991. The application for pre-emption was filed in the year 1991 and the same was disposed of by the learned Civil Jude (Junior Division), 1st Court, Ranaghat on December 11, 2001 allowing the application for pre-emption in respect of lands as described in Schedule ''B'' to the application on the ground of co-sharership. The Lower Appellate Court also disposed of the misc. appeal arising out of the judgment of the said misc. case on April 28, 2008, holding that the opposite party is entitled to pre-empt in respect of the three plots was described in Schedule ''B'' to the plaint on the ground of co-sharership. He assessed the consideration value of the three plots and the amount to be paid thereon for pre-emption. Thereafter, the present revisional application has been preferred.

5. In the mean time, the West Bengal Land Reforms Act, 1955 has gone under amendment and the Amendment Act was published on March 14, 2001. The West Bengal Land Reforms (Amendment) Act, 2000 has been enacted and the said Act of 2000 has come into force with effect from August 7, 1969. The misc. case for pre-emption was pending on March 14, 2001.

6. This being the position, according to Section 30 of the Amendment Act of 2000, the application cannot be treated as disposed of finally. So, the provisions of the West Bengal Land Reforms (Amendment) Act, 2000 shall govern the case and it is to be considered whether the learned Lower Appellate Court was justified in dismissing the misc. appeal preferred by the Petitioners. These observations are in consonance with the decision of Ramesh Chandra Pramanick Vs. Sushil Kumar Pradhan, .

7. The pre-emptor filed the application u/s 8 on two grounds, namely, (i) being a contiguous raiyat and (ii) a co-sharer raiyat. So far as the ground of contiguous raiyat is concerned, I find that upon analysis of the evidence on record, the learned Trial Judge and the learned Lower Appellate Court have held that the pre-emptor is not a contiguous raiyat. The pre-emptor did not prefer any appeal or revision against the order of the learned Trial Judge or of the Lower Appellate Court

respectively. So, the position remains that the pre-emptor has conceded the proposition of law as decided by the concurrent findings of the Courts below.

8. During the argument, Mr. S.K. Kundu appearing on behalf of the pre-emptor has submitted that the pre-emptor sought for amendment of the application u/s 8 of the Act at the appellate stage and so, the ground of contiguous raiyat should be taken into consideration. The Lower Appellate Court did not pass any order of pre-emption on the ground of being a contiguous raiyat. He has held that the opposite party has failed to prove by way of sufficient evidence about his claim on the ground of vicinage. There being no challenge of the finding of the learned Lower Appellate Court by the pre-emptor, I hold that the ground of contiguous raiyat need not be considered more. Moreover, as discussed below, there being no proof of partition according to Section 14 of the 1955 Act, there cannot be any right of pre-emption u/s 8 of the Act on this ground. My observation gets support from the decision of Dushasan Kayal v. Smt. Sandhyarani Das reported in (2) 1997 CLT 107. Therefore, the ground of being a contiguous raiyat need not be considered further.

9. As regards, the ground of being a co-sharer raiyat, after the Amendment Act of 2000, any co-sharer of a raiyat in the plot of land is entitled to exercise the right of pre-emption u/s 8 of the Act. In order to have a clear picture about it, it will be proper to discuss the definition of co-sharer of a raiyat in a plot of land. According to Section 2(6) of the Amendment Act of 2000, a "co-sharer of a raiyat in a plot of land" means a person, other than the raiyat, who has an undemarcated interest in the plot of land along with the raiyat. According to Section 2(10) of the West Bengal Land Reforms Act, 1955 as amended subsequently in 1981 "raiyat" means a person or an institution holding land for any purpose whatsoever. As indicated earlier, the Amendment Act of 2000 has come into force retrospectively w.e.f. August 7, 1969 and so, the expression "the co-sharer of a raiyat in the plot of land" shall be deemed to have the meaning as laid down in Section 2(6) of the Act w.e.f. August 7, 1969. So, an undivided co-sharer in the plot of land, the portion or share of which has been sold to the stranger purchaser is entitled to have the order of pre-emption u/s 8 as per Amendment Act of 2000.

10. Upon analysis of the evidence on record, both the Courts below have come to the concurrent finding that the lands in case as referred to in Schedule ''B'' of the application have not been partitioned by metes and bounds by a deed of partition or a decree of the Court as per Section 14 of the Land Reforms Act. Therefore, it should be treated that the lands in case as referred to in Schedule ''B'' to the application had not been partitioned as yet. My conclusion in this respect gets support from the decision of (2) 1997 CLT 107.

11. Admittedly, the Plaintiff purchased a portion of the lands in case in 1970 and he got possession from the western side of the said lands. This fact has also been proved by evidence on record both oral and documentary that the pre-emptor is a co-sharer of the plots in case as mentioned in Schedule ''B'' to the application. Since,

the lands in case still remain unpartitioned, according to the amended definition of a co-sharer raiyat, the pre-emptor has become a co-sharer of a raiyat in the plots of land in case having an undivided interest therein. A portion of the undivided lands as described in Schedule "B" of the application had been sold to the stranger purchasers, that is, the Petitioners and the pre-emptor has wanted to pre-empt the same in respect of such lands in case as described in Schedule "B" to the application. Therefore, such findings of the Lower Appellate Court, I hold, should be supported.

12. Mr. Chakraborty has submitted that the learned Trial Judge has not discussed at all the provisions of the Amendment Act of 2000 and as such the judgment of the learned Trial Judge is a nullity. In this regard, I hold that though, the learned Trial Judge did not discuss the provisions of Amendment Act of 2000, the conclusion, he has arrived, cannot be said to be not sustainable. Accordingly, so far as the findings of the Lower Appellate Court in respect of Schedule "B" lands are concerned, I am of the view that the findings made by the learned Judge should be supported.

13. So far as the remaining plots, that is, the plot Nos. 328 and 341 as described in Schedule "A" to the application, the entire share of the vendors had been transferred to the stranger purchasers, i.e., the Petitioners herein. I am of the view that the learned Lower Appellate Court has rightly rejected the prayer for pre-emption in respect of these two plots.

14. As regards, the deposit of consideration money along with 10 per cent of the same, the learned Lower Appellate Court has made findings for proportionate pre-emption and such findings are not under challenge in this revisional application. Mr. Tapabrata Chakraborty did not make any submission on this matter and so, the determination of the consideration value in respect of the lands described in Schedule "B" and 10 per cent of the same, should be supported.

15. During argument Mr. Tapabrata Chakraborty has referred to the decision of Saranan Mondal and Another Vs. Bejoy Bhushan Ghosh, particularly the paragraph No. 6 and he has submitted that the ground of pre-emption as co-sharer raiyat should not be taken into consideration as there is no specific averment in this regard in the application u/s 8 of the Act. He has also argued that there is no averment that any portion or share of a plot of land has been transferred and in absence of such pleadings, the application for pre-emption is unsustainable. This contention, I hold, cannot be accepted inasmuch as if the application is perused as a whole, it lays down that a portion or share of a plot of land had been transferred particularly the Schedules of the lands as described in the application indicate that a portion of the land with respect to Schedule "B" lands had been transferred. The application lays down the ground of co-sharership for pre-emption. Further, I am of the view that this decision relates to the provisions of the Land Reforms Act prior to the Amendment Act of 2000. The evidence on record is sufficient to conclude that a portion of the plot in respect of Schedule "B" lands had been transferred to the

stranger purchasers. So, this decision of Saranan Mondal and Anr. (supra) will not help the Petitioners at all.

16. Similarly, Mr. Chakraborty has next contended the decision of Sk. Sarafat Ali and Ors. v. Hossain Ali Molla and Ors. reported in 2002 (4) CHN 285 and he submits what is ''holding'' and ''share or portion of a plot of land''. I hold that the concept of holding need not be considered more in view of the Amendment Act of 2000. Now, it is to be considered if a portion or share of a plot of land of a raiyat is transferred to a stranger purchaser and if the pre-emptor is a co-sharer of the plot of land. In this regard, the learned Lower Appellate Court has made clear observations that the ingredients of Section 8 of the Act on the ground of co-sharership, have been complied with by the pre-emptor. So, I hold that this decision will not be applicable in the given circumstances.

17. Mr. Chakraborty has next referred to the decision of Lachhman Dass v. Jagatram and Ors. delivered on February 20, 2007 and reported in Judgment and thus, he submits as to service of notice, according to this decision, the registration of a deed is treated as complete when the deed has been duly entered in books kept u/s 61 of the Registration Act, 1908. Mr. Chakraborty has also contended that the right of pre-emption is a very weak right, although it is a statutory right. The Court must bear in mind about the character of the right vis-�-vis, the constitutional right of the owner thereof. There is no material to hold that the notice of transfer was ever served upon the pre-emptor being a co-sharer. So, the pre-emptor is a non-notified co-sharer of the plots in case and so the limitation of 3 months from the date of service of notice will not be applicable in the instant case. As per established law, the pre-emptor will get the benefit of Article 137 of the Limitation Act, 1963. In fact, no such contention of limitation has been raised in the revisional application. Therefore, he is entitled to file the application for pre-emption u/s 8(1) of the said Act beyond the period of 3 months from the date of registration. Therefore, I am of the view that this decision will not help the Petitioners.

18. As regards, the total land possessed by the pre-emptor in case of allowing the application for pre-emption u/s 14M of the Act, I find that the findings of the Lower Court in this respect are not at all the matters of challenge before this revisional Court. So, the findings of the Lower Appellate Court in this respect should be supported.

19. Above all in exercising revisional jurisdiction under Article 227 of the Constitution of India, this Hon''ble Court should not set aside the concurrent findings arrived at by the Courts below, unless, there is any perversity. In the instant case, I hold that the Petitioners have failed to show any perversity on the part of the Lower Appellate Court in arriving at a conclusion for passing orders of pre-emption on the ground of being a co-sharer raiyat in the plots in case. Therefore, the findings of the Courts below based on evidence should not be disturbed.

20. In that view of the matter, I am of the opinion that this application is devoid of merits. There is no scope of interference with the impugned order. Accordingly, the revisional application is dismissed.

21. Considering the circumstances, there will be no order as to costs.

22. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.