

(1937) 02 CAL CK 0032

Calcutta High Court

Case No: Civil Rule No. 1033 of 1936

Satish Chandra Banerjee and
Others

APPELLANT

Vs

Jogendra Krishna Banerjee and
Others

RESPONDENT

Date of Decision: Feb. 19, 1937

Final Decision: Allowed

Judgement

D.N. Mitter, J.

This Rule was obtained for the revision of an order made by the Munsif under sec. 26F of the Bengal Tenancy Act by which the names of the Petitioners were struck off from the category of persons who are entitled to preempt at compulsory sales held in respect of two occupancy holdings. The application for pre-emption was made by Jogendra Krishna Banerjee, Nil-krishna Banerjee, Sarat Kumar Banerji, Hemanta Kumar Banerji, and Benoy Krishna Banerji, who are described as Opposite Parties Nos. 1 to 5 in this Rule. The other co-sharer landlords, including the Petitioners were named in the category of Opposite Parties in the said application for pre-emption under sec. 26F. It appears that in order to avoid the effect of sec. 188 of the Bengal Tenancy Act the Opposite Parties, namely, Jogendra Krishna Banerjee and four others applied, in accordance with the proviso to that section, for notice to be given to the other co-sharers. According to the proviso to sec. 188 the application by some of the co-sharer landlords of an occupancy holding would be thrown out unless the others also joined in it, provided that one or more co-sharer landlords with all the other co-sharer landlords were made parties Defendant to the suit or proceeding in the manner provided in sub-sees. (1) and (2) of sec. 148A and were given the opportunity of joining in the suit or proceeding as co-Plaintiffs or co-Appellants. Under sec. 183 (1) (i) this section applies to applications under sub-sec. (i) of sec. 26F and must be made by all the co-sharer landlord, subject to the proviso. That is the reason why notice was directed to be served in the manner provided for by sec. 148A, clauses (i) and (ii). This notice apparently was not served in such a time as to

enable the other co-sharer landlords to join within one month of the original application which was filed on 9th of December, 1935. The Munsif held that the right of pre-emption could only be exercised by Opposite Parties Nos. 1 to 5 as the Petitioners did not apply within one month of the date of the original application to join in the application for pre-emption as contemplated by sec. 26F (4) (a). The answer to that contention is, as has been suggested on behalf of the Petitioners, that here due to the act of the Court the notice under sec. 148A, cl. (2), was not served within one month from the date of the application and that the applicants before him came in within reasonable time of the service of that notice. The Munsif has relied on the circumstance that the applicants had knowledge aliunde, that is apart from the service of notice of the application made by the other co-sharer landlords for pre-emption. Taking that View, he has struck out the names of the applicants from the category of persons entitled to pre-emption and has given the right of pre-emption exclusively to the original applicants, namely, Jogendra Krishna Banerji and four others.

2. The applicants, aggrieved by this order, have obtained this Rule and it has been contended before me that as the applicants came within a reasonable time of the service of the notice of the original application for pre-emption under sec. 148A (2), read with sec. 188, they should not have been struck out from the category of co-applicants for pre-emption. It seems to me that this contention is right.

3. For the Opposite Party Mr. Pancha-nan Ghose has argued that there has been no prejudice so far as the Petitioners are concerned, seeing that according to the finding of the Munsif these Petitioners were informed and they knew of this application in time to come within one month as laid down in sec. 26F, sub-sec. (4) (a). The evidence has been read over to me by Mr. Ghose and I am not satisfied that this is such evidence upon which the Court could come to the conclusion that the Petitioners before me had definite knowledge of the application for pre-emption and, in particular, of the date when such application was made. It is not the intention of the framers of the statute that these matters of knowledge on which the period of limitation depends should be left to be decided on vague informations and rumours with regard to the date of the applications. It must be such knowledge as is fixed by notice to be given under sec. 148A (2). I am, therefore, of opinion that the view taken by the Munsif is not correct. The Rule is accordingly made absolute and I direct that that right of pre-emption should be exercised not only by the first five Opposite Parties but also by the Petitioners Satish Chandra Banerjee, Nalini Kanta Banerjee, Sm. Rajabala Devi, Bhujendra Nath Banerjee and Khagendra Nath Banerjee.

4. One of the co-sharers Kripa Charan Banerjee has appeared as one of the Opposite Parties in this rule. With regard to him it has been contended by the learned Advocate that he also ought to be allowed to exercise the right of pre-emption. But the difficulty is that he has not moved to set aside the order of the Munsif. Besides it

seems to me that there is some evidence which would go to show that he himself made enquiries with regard to the application for pre-emption. His case stands on a different footing and as there is no application against the order made by the Munsif striking him out of the category of co-applicants, I do not think anything can be done so far as he is concerned. The Rule is made absolute so far as the Petitioners are concerned. There will be no order as to costs in this Rule. Let the counter-affidavit filed in Court to-day be kept on the record.