

(1985) 06 CAL CK 0020

Calcutta High Court

Case No: C.R. No"s. 2017-18 of 1975

Fuzle Hakanl

APPELLANT

Vs

Sk. Arsed Ali and Another

RESPONDENT

Date of Decision: June 5, 1985

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 115
- West Bengal Land Reforms Act, 1955 - Section 2(7), 8, 9(6)

Citation: 89 CWN 1081

Hon'ble Judges: Satish Chandra, C.J

Bench: Single Bench

Advocate: S.N.S. Alquadri, for the Appellant; Saradindu Samanta for the Opposite Party
No. 1, for the Respondent

Final Decision: Allowed

Judgement

Satish Chandra, J.

The petitioner filed an application for preemption u/s 8 of the West Bengal Land Reforms Act in respect of two sale deeds executed by the opposite parties on the 22nd and 23rd February, 1973 transferring 1.79 acres in plots nos. 80 and 85. The opposite parties contested. Their plea was that the petitioner had purchased in 1962 a portion of plot no. 117 which was a tank and hence it was not land as defined in the Land Reforms Act and so he was not a co-sharer. The application for pre-emption was not maintainable. The trial Court found that the pre-emptor had purchased in 1962. 07 acre of plot no. 117 which was a doba. Doba is tank. Tank was outside the definition of land in the Land Reforms Act. Therefore the pre-emptor was not a co-sharer of the holding. The application for pre-emption was dismissed. The pre-emptor went up on appeal. The appellate Court held that doba was a tank and so the pre-emptor was not a co-sharer. It rejected the submission that doba was

different from a tank. He held that both tank and doba are reserviors of water and so doba is not a land as defined. He also held that admittedly no notice was served on the pre-emptor but since he was not a co-sharer, he was not entitled to pre-empt. The appeal was dismissed. Aggrieved, the pre-emptor has come to the Court in revision. The learned Counsel for the petitioner has invite my attention to a decision in Niranjana Das vs. Lakshmi Mani Dasi, 86 CWN 318. In this case it was held that deba does not come within the mischief of the word "tank" as is apparent from the Wilson's Glossary that doba means low or swampy or inundated land. Therefore, in my opinion, the doba is low land. But it is never a tank which can be said to be excluded from the word "land" as defined in section 2(7) of the West Bengal Land Reforms Act. This authority is on all fours and supports the petitioner. In this view it has to be held that by virtue of the purchase of the doba, the petitioner purchased land as defined in the Land Reforms Act and became a co-sharer of the holding in which the doba, plot no. 117 was situate. Admittedly the holding was the same and a portion of which was transferred by the sale deed in question.

2. The learned Counsel for the opposite party then submitted that the petition for pre-emption was barred by time because it was not filed within three months as provided in section 8 of the Land Reforms Act. The period of three months commenced from the date of service of the notice on the pre-emptor. In this case admittedly no notice was served on the pre-emptor. As such the aforesaid period of limitation was not applicable. No other objection to the pre-emption application was taken in any of the two Courts below. It is hence unnecessary to send the case back.

3. It was argued on behalf of the opposite party that the Additional District Judge who disposed of the appeal was not a Court within the meaning of section 115 C.P.C. He relies upon a decision in Ishan Chandra Ghatak vs. Sasadhar Matty, AIR 1978 NOC 193 (Cal). In that case it was held that an appellate authority u/s 9(6) is not a Court but a persona designata. Application u/s 115 C.P.C. is not maintainable. Its order is revisable under Article 227 of the Constitution. Power to interfere u/s 115 C.P.C. as well as under Article 227 of the Constitution vests in the High Court and the High Court can in a proper case interfere in exercise of any of the powers which may be applicable. In the result, the Rules are made absolute. The impugned orders are set aside. The applications for pre-emption are allowed. No order is made as to costs.