

(1986) 03 CAL CK 0030**Calcutta High Court****Case No:** C. O. No. 2393 of 1985

Sadhan Ch. Samanta and Others

APPELLANT

Vs

Jaladi Bala Dassi and Another

RESPONDENT

Date of Decision: March 19, 1986**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 1, 99
- Limitation Act, 1963 - Section 14, 5
- West Bengal Land Reforms Act, 1955 - Section 8

Citation: 90 CWN 809**Hon'ble Judges:** Sushanta Chatterjee, J; Mookerjee, J**Bench:** Division Bench**Advocate:** R. N. Mitra and P. K. Giri, for the Appellant; Tapan Kumar Mukherji, for the Respondent**Final Decision:** Dismissed**Judgement**

Sushanta Chatterjee, J.

The present Revisional application is directed against the Order dated 30th day of July 1985 passed by the Learned Additional District Judge, Third Court, Midnapore in Miscellaneous Appeal No. 48 of 1983 arising out of the Order dated 19th March 1983 passed by Munsif of Garbeta in Pre-emption Case No. 17 of 1978. The Opposite Party No. 1 Smt. Jaladi Bala Dassi wife of Late Upendra Nath Khamrui and the Opposite Party No. 2 Shri Kinkar Khamrui son of Late Upendra Nath Khamrui jointly filed an application u/s 8 of the West Bengal Land Reforms Act 1955 being Case No. 17 of 1974 in the Court of the Munsif at Garbeta for Pre-emption alleging that Plot No. 149 appertaining to Khatian No. 164/1 in Mouza Srimanipore measuring 1.50 acres was contiguous to Plot No. 150 and Plot No. 3 30 on the North belonging to Smt. Jaladi Bala Dassi and Plot No. 136 on the West belonging to Shri Kinkar Khamrui. It was further alleged that the Plot No. 149 belonged to Pachkari Goswami,

Radha Govinda Goswami and Amar Krishna Goswami and by a Registered Deed of Sale dated 5th June 1974, they had sold the properties to Sadhan Chandra Samanta and others, the present petitioners, on a consideration of Rs.6,999/. The petitioners were admittedly stranger purchasers and the Opposite Parties Nos. 1 and 2 were related to one another as mother and son. On 19th February, 1977 the said Jaladi Bala and Kinkar Khamrui had applied for amendment of the Pre-emption application which was disallowed by the Learned Munsif on 26th August, 1977. Against the said Order Hon'ble High Court at Calcutta was moved and C. R. No. 2828 of 1977 was obtained on 24th May, 1978. The said Rule was disposed of and leave was granted to withdraw the said Pre-emption Case and to file the same again subject to limitation. The matter went back and on August 8, 1978 the Pre-emptor filed the application along with a prayer u/s 5 of the Limitation Act. The Learned Munsif allowed the said application u/s 5 read with Section 14 of the Limitation Act, condoned the delay and then disposed the application for Pre-emption on its merits in favour of the Pre-emptor. Being aggrieved the petitioner preferred Misc. Appeal No. 48 of 1983. By his order dated August 29 1983 the Learned Additional District Judge disposed of the appeal by remanding the case for Re-trial by the Learned Munsif. Again a revisional Application was moved in the Hon'ble High Court which was registered as Civil Order No. 30 45 of 1983; the same was disposed on July 2, 1984 by the Hon'ble Mr. Justice Anil Kumar Sen and the Hon'ble Mr. Justice Prabir Kumar Majumdar. The order of the Additional District Judge was set aside and the matter was remanded for disposal by considering the claim of pre-emption on its merit. By Order dated July 30, 1985, after remand, the Appeal was dismissed, subject to the modification of the Order of the Learned Munsif to the extent that the petition u/s 8 of the West Bengal Land Reforms Act in favour of Jaladi Bala Dassi was allowed and the prayer for Pre-emption on behalf of Kinkar Khamrui was dismissed. Against the said final Order dated July 30, 1985. Sadhan Chandra Samanta and others have since come up. The said Kinkar Khamrui has also filed a Revisional application being aggrieved by the said Order of the Learned Additional District Judge.

2. Mr. Rabindra Nath Mitra, learned advocate on behalf of the petitioners, has made two-fold submissions in support of this Revisional Application. First, he had submitted that the application for pre-emption filed jointly by the pre-emptor was not maintainable in law. The Learned Additional District Judge had proceeded on erroneous assumption that there was no dispute or conflict between the two. The two petitioners had separate and distinct causes of action. They could not have jointly claimed right to pre-empt the impugned transfer in favour of the present petitioner this who as owners of the two different contiguous plots had claimed independent rights to the exclusion of all others. Therefore, the two pre-emptor could not have been lawfully joined in one single application u/s 8 of the West Bengal Land Reforms Act. Mr. Mitra has next submitted that even assuming the two pre-emptors could have been lawfully joined in one single application each one of

them was bound to separately deposit the amounts of consideration money together with compensation. One single deposit of the amount had been made. The absence of separate deposits of each one of the pre-emptors whose claims were antagonized to each other, was total, and in any view, their joint application u/s 8 of the West Bengal Land Reforms Act was bound to fail.

3. In our view, in substance the first point raised by Mr. Mitra was really against joinder of parties. There had been protracted trial and both the two pre-emptors and the prompters had full opportunities to establish their cases. Even assuming the application u/s 8 of the West Bengal Land Reforms Act was defective by reason of mis-joinder of parties, the same did not affect the merits of the decision made by the Learned Additional District Judge. The court in which the pre-emption application was filed, undoubtedly, had jurisdiction to entertain the same. Therefore, the principles embodied in Section 99 of the CPC would be attracted to the present case and we are not prepared to reverse the decision complained of merely on the ground of misjoinder of parties. In the instant case right of both the applicants for pre-emption arose from the same act or transaction by way of transfer in favour of the present petitioners who were stranger purchasers. Both the applicants claimed right of pre-emption as owners of contiguous plots. Therefore, if they had filed separate applications u/s 8 of the West Bengal Land Reforms Act, common question of law and fact would have arisen. Joinder of the two did not embarrass or delay neither the trial court nor the lower appellate court to put the two applications to their election or order separate trial. At this belated stage, therefore, no further objection could be raised by the petitioners against the joinder of the two applicants in one single application for pre-emption.

4. Relying upon the two decisions of the Madras High Court in Lingamal & Ors. vs. Chinna Venkatmal & Ors, (1883) 6 Madras 2 39 and Govindanathan vs. Pandithan AIR 1950 Madras 760, Mr. Mitra, learned advocate on behalf of the petitioner, submitted that Order 1 Rule 1 of the Code does not authorise joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Both the said two decisions of the Madras High Court are distinguishable on facts. In the case of Lingual vs. Venkatamal (supra) the first plaintiff claimed as one of the widows of the deceased owner while the second plaintiff claimed to have been validly adopted by the first plaintiff. But the claim of the first plaintiff was on the assumption that there was any adoption of the plaintiff no. 2. While the claim of the second plaintiff Watson the footing that the first plaintiff had no right because of his adoption, Inns and Muttuswami Ayyar, JJ., held, inter alia, that the joinder of the two plaintiffs was bad because the claims of the two plaintiffs were antagonistic to each other and it could not be said that they were jointly interested in the causes of action for the suit. In the other reported decision in the case of Gobindanathan vs. Pandithan (supra) arose out of a permission granted to the two plaintiffs to sue in forma pauperis. The defendant resisted the said claim on the ground that the suit was bad for mis-joinder but was overruled by the Subordinate Judge and the plaint was directed

to be registered. A learned Single Judge of the Madras High Court allowed the Revisional Application upon the view that the two causes of action blended were distinct, separate and antagonistic and gave opportunity to the plaintiffs to elect which cause of action to prosecute in the suit, i.e., one of the two plaintiffs was given option to drop out. Therefore, this decision does not at all help the case of the petitioners because if the ratio of the said decision was applicable, one of the two pre-emptors have to be given option to drop out. In fact, the order of the Lower Appellate Court upholds the claim of Jaladhibala Dassi, who as the owner of a contiguous plot having longest common boundary with the plot transferred in favour of the purchaser petitioners had preferential right to pre-empt.

5. Mr. Mitra has also relied upon the decision of the Judicial Committee in the case of Mewalal vs. Basant Singh AIR 1918 P. C. 49=28 CLJ 530. The Judicial Committee was of the view that the case could be disposed of on other grounds but had thought fit it right to comment about one objection feature of the case. According to the Judicial Committee in the plaint a larger number of persons had been joined in the hope of assisting the defendants by a mass attack which had embarrassed the opposite party and the issues were discarded. Former Rule 1 of Order 1 of the Code has been substituted by Section 52(1) of Act 104 of 1976. The same was redrafted "to make the intention clear". Under the substituted Rule 1 all persons may be joined in one suit as plaintiffs where -

(a) any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions alleged to exist in such persons whether jointly, severally or in the alternative, and

(b) if such persons brought separate suits, any common question of law and fact would arise.

In the instant case, transfer in favour of stranger purchasers of a share in the holding in question gave rise to right of pre-emption in favour of owners of adjoining plots. In other words, both the applicants u/s 8 became entitled to claim right to relief arising out of the same act or transaction, if they had filed separate applications u/s 8 common question of law and fact would have arisen. Secondly, in such an event the court would have been called upon to decide of the two who had possessed land having the longest common boundary with the land transferred. Therefore, even if separate applications u/s 8 were filed, it would have been necessary to analogously try the same and also to decide who had the preferential right to pre-empt the transfer in favour of the stranger purchasers. For the foregoing reasons, we hold that there was no misjoinder by reason of the two application jointly making the application u/s 8 of the West Bengal Land Reforms Act. Alternatively such joinder did not affect the merits of the case or the jurisdiction of the Court.

6. In view of the Division Bench decision in the case of Jatish Chandra Sardar vs. Hiralal Sardar, ILR 1971(1) Calcutta 213, we reject the other submission on behalf of the petitioners that the joint application u/s 8 of the West Bengal Land Reforms Act filed by Jaladhibala Dassi and Kinkar Khamrui ought to have been rejected in limina on the ground that each one of them did not make separate deposits of the consideration money together with a further sum of 10% of that amount. No doubt, said Jaladhibala Dassi and Kinkar Khamrui did not claim right of pre-emption, but they individually possessed different lands adjoining the holding transferred in favour of the present petitioners. The lower appellate court has found that the plot of land possessed by Jaladhibala Dassi had the longest common boundary with the land transferred and therefore in modification of the order passed by the learned Munsif, the lower appellate court has allowed the pre-emption application of Jaladhi Bala alone. Even assuming that one single deposit of the consideration money together with 10% thereon made by Jaladhibala and Kinkar did not in the eye of law amount to deposit of the said sum by Jaladhi Bala, even then the same could not be a ground for rejecting Jaladhi Bala's claim to pre-empt the transfer. In the case of Jotish Chandra Sardar vs. Hiralal Sardar (supra), which was relied upon by Mr. Tapas Mukherjee, learned advocate on behalf of the opposite parties, P. N. Mookherjee and Chakravorty, JJ., had, *inter alia*, pointed out that section 8 of the West Bengal Land Reforms Act did not contain any provision similar to sub-section (2) of Section 26F of the Bengal Tenancy Act. Under Sub-section (2) of Section 26F of the said Act a pre-emption application was to be dismissed unless the applicant or applicants at the time of making its deposit in court, the amount of consideration money together with compensation at the rate of 10% of such amount. Thus, section 8 of the West Bengal Land Reforms Act has not made it imperative to deposit the consideration money and the compensation thereon at the time of making pre-emption application or that in default thereof the application would be dismissed. Sub-section (1) of section 8 of the West Bengal Land Reforms Act, according to the Division Bench, in the case of Jotish Chandra Sardar vs. Hiralal Sardar (supra), indicated the condition upon which the transfer in favour of the pre-emption is to be made rather than the manner in which the application u/s 8 is to be made. Therefore, the deposit of the consideration money and the compensation thereon need not be necessarily be made within four months or three years as the case may be from the date of transfer on which the transfer in favour of any person other than a co-sharer in the holding. The said Division Bench decision is binding upon us and therefore we are unable to accept the submission of Mr. Mitra on the contrary to the (sic) expressed by the Division Bench.

7. Kinkar Khamrui also filed an Application against the order dated 30th July, 1985 by learned Additional District Judge, 3rd Court, Midnapore modifying the order of the learned Munsif and allowing the prayer of pre-emption only in favour of Jaladhi Bala Dassi and rejecting the prayer for pre-emption made on behalf of Kinkar Khamrui. Mr. Mukherjee, learned advocate on behalf of Kinkar Khamrui, has not

pressed the said Revisional Application. The said application is accordingly dismissed for non-prosecution. For the foregoing reasons, we hold that the Learned Additional District Judge did not commit any jurisdictional error in allowing the prayer u/s 8 of the West Bengal Land Reforms Act made by Jaladhi Bala Dassi. We accordingly dismiss this Revisional Application without any order as to costs.

Mookerjee, J.

I agree.