

(2013) 12 CAL CK 0059

Calcutta High Court

Case No: C.O. No. 1851 of 2007

Mihirlal Ghosh Dastidar and
Another

APPELLANT

Vs

Ila Roy and Others

RESPONDENT

Date of Decision: Dec. 24, 2013**Citation:** (2014) 1 CALLT 542**Hon'ble Judges:** Sahidullah Munshi, J**Bench:** Single Bench

Judgement

Sahidullah Munshi, J.

This is a revisional application at the instance of proforma Opposite Parties Nos. 3 and 4 in the preemption application and they have challenged Order No. 71 dated April 21, 2007, passed by the learned Civil Judge (Junior Division) Second Court, Serampore, in preemption Miscellaneous Case No. 100 of 1986. By the Order impugned the learned Judge has rejected petitioners' application under Order 1 Rule 10(2) read with section 151 of the CPC seeking for their transposition in the category of petitioners in the Pre-emption Application. Order dated 26th July, 2007 reveals that Mr. Amlan Mukherjee entered appearance for Opposite Party No. 1, the Principal Opposite Party, who is not present even at the second call. Mr. Anit Kumar Rakshit appearing in support of the revisional application submits that the matter is ready as regards service. He further submits that Gosailal Ghosh Dastidar, the applicant for pre-emption died and in his place Opposite Parties Nos. 2, 3 and 4 were substituted. Proforma Opposite Party No. 5 in the revisional application is the Opposite Party No. 2 in the Miscellaneous Case pending before the learned Court below. The said substituted Opposite Parties No. 2 and 3 also died and their death have been duly recorded by Order of this Court.

2. Mr. Rakshit appearing in support of the Civil Revisional Application submits that the predecessor of the Opposite Parties Nos. 2 to 4 herein namely, Gosailal Ghosh Dastidar filed an application initially u/s 24 of the West Bengal Non-agricultural

Tenancy Act and prayed for preemption of the disputed land described in the Schedule to the pre-emption application, in the Court of the learned Munsif, Second Court, Serampore. An application for amendment was made and the application u/s 24 of the Non-agricultural Tenancy Act was allowed to be converted into one u/s 8 of the West Bengal Land Reforms Act, 1955. Such application for amendment was filed by the petitioner in the pre-emption case in 2002. The pre-emption application did not really proceed before 2002 until the amendment was allowed converting the application u/s 24 of the Non-agricultural Tenancy Act into one u/s 8 of the West Bengal Land Reforms Act, 1955.

3. It is the case of the petitioner in the pre-emption application that one Gangadhar Ghosh and his brother, Tarapada Ghosh, both sons of late Prafulla Chandra Ghosh, were the owners in the moiety share of the non-agricultural property recorded under Plot No. 1526 (tank) and 152/1770 (bastu) with pacca structure and the annual rent of the suit property is Rs. 36.75 paise in Dakhalkar right, but the same has not been sub-divided. The suit property situates within the municipal limit of Baidyabati Municipality and has been recorded as joint property of both the two brothers Gangadhar and Tarapada under Municipal Holding No. 50 of Mohalla N.C. Mukherjee Road within Ward No. 8 of Baidyabati Municipality. It is stated that the pre-emptor has been a monthly tenant of the premises for a long time, under the landlords Gangadhar and his brother Tarapada Ghosh. The pre-emptor came to know that the absentee landlords were desirous of selling the suit premises and that both the brothers agreed to sell their undivided 16 annas share in the suit holding.

4. At first Tarapada Ghosh sold his undivided moiety share to the pre-emptor who is the predecessor of the Opposite Parties Nos. 2 to 4. Such sale was made on 25th July, 1983 for a sum of Rs. 10,000/- (ten thousand) by a registered sale deed. It is the case of the petitioner that although pre-emptor alone purchased and paid the entire consideration money yet out of love and affection for his younger brothers Mihirlal Ghosh Dastidar and Kishanlal Ghosh Dastidar, were also incorporated in the deed of transfer as purchaser. The said Mihirlal Ghosh Dastidar and Kishanlal Ghosh Dastidar are the present petitioners in the present revisional application. The said Mihirlal Ghosh Dastidar and Kishanlal Ghosh Dastidar being named in the deed of transfer, were also impleaded as proforma Opposite Parties Nos. 3 and 4 in the pre-emption application. It has been further contended in the pre-emption application that at no point of time the non-agricultural lands and tenancy in the structures and municipal holding had been partitioned and this remained a joint property. It is contended that Gangadhar Ghosh, the vendor/Opposite Party No. 2 in the Misc. Case had sold undivided 1/4th share out of his undivided half share to the pre-emptor/Principal Opposite Party No. 1 on August 17, 1984. It is the case of the pre-emptor that the Opposite Party No. 1 in the pre-emption application is a stranger purchaser and, therefore, the pre-emptor, namely, the predecessor of the Opposite Parties Nos. 2 to 4 in this revisional application is entitled to preempt the

sale deed dated August 17, 1984 and for the said purpose, the pre-emption application was filed which was numbered as P.M.C. No. 100 of 1986 which is now pending before the learned Civil Judge (Junior Division) Second Court, Serampore.

5. In the aforesaid pending Misc. Case being P.M.C. No. 100 of 1986, the proforma Opposite Parties Nos. 3 and 4/petitioners in this revisional application filed an application for their transposition in the category of petitioner in the pre-emption application. Such application has been annexed to the revisional application.

6. In the said application, the proforma Opposite Parties Nos. 4 and 5 contended that at the time when the pre-emption application was filed they were not present rather they were out of station and for that reason they were made proforma Opposite Parties. They submit that they have also a good cause to pray for pre-emption with the petitioner in the pre-emption case.

7. The said application was taken up for consideration by the learned Court below and by the Order impugned, the Court below has rejected the said application under Order 1 Rule 10(2) read with section 151 of the CPC on contest. The learned Judge has rejected the application holding, inter alia, that the application under consideration has been filed after long 20 years. It has been also held that consideration and compensation money was paid by the petitioner and not by the said proforma Opposite Parties Nos. 3 and 4. The learned Judge has also held that a co-sharer can lodge his claim within a prescribed period and even amongst the co-sharer, who lodged his claim for the first time, would get the benefit for his claim in exclusion of others. The learned Judge has opined that by such transposition of parties the right, if any, incurred by the Opposite Party No. 1 would be lost.

8. After going through the revisional application, the application for transposition of parties being Annexure A to the revisional application and the Order impugned, it appears that the claim of the proforma Opposite Parties Nos. 3 and 4, being the revision petitioners herein, was never opposed by the Pre-emption petitioner. The present petitioners were already on record as proforma Opposite Parties and if the pre-emptor does not make any objection for joining proforma Opposite Parties Nos. 3 and 4 as preemptors/petitioners, the learned Court below was wrong in holding that the interest of the Opposite Party No. 1 in the pre-emption case would be lost. Addition of a party either as defendant or as a plaintiff does not, ipso facto, nullify the claim of either of the parties; such addition is made subject to any plea that may be taken at the final hearing of the pre-emption case.

9. As regards the question of delay in filing the application, it does not appear that a co-sharer, being very much on record as a proforma Opposite Party, can lose his right to make a claim for being added as the pre-emptor particularly when the original preemptor does not make any objection for such transposition under Order 1 Rule 10(2) of the Code of Civil Procedure.

10. Learned Judge has held that by such addition the right of the Opposite Party No. 1, in the pre-emption case, would be lost, is, however, not based on any sound reasoning. Her right cannot be affected because of the addition of the proforma Opposite Parties Nos. 3 and 4/petitioners with the pre-emptor. Previously the pre-emptor wanted to pre-empt alone, now will be pre-empted with the proforma Opposite Parties Nos. 3 and 4 and, therefore, the finding arrived at by the Court below is not correct and the views taken are erroneous in nature.

11. Provisions of Order 1 Rule 10(2) of the CPC give a very wide discretion to the Court to deal with any such situation which may result to prejudicing the interest of affected party if not impleaded in a proceeding or suit. The important aspect which should be looked into by a Court while dealing with an application under Order 1 Rule 10(2) is to avoid multiplicity of litigations and also conflicting decisions being passed in different suits which could only be safeguarded by allowing a necessary party to be impleaded in the suit.

12. In the present case, since the Opposite Parties Nos. 3 and 4 were already on record, in my view, justice will not be sub-served if at a subsequent stage of the proceeding their application for transposition is turned down. Those apart, addition of party or transposition of defendants into the category of plaintiffs does not mean addition of new cause of action and widening of particular issue; the transposition and/or addition should be considered leniently but subject to all objections that may be taken by the contesting parties.

13. In view of the above observation, the Order impugned being Order No. 71 dated 21st April, 2007, passed by the learned Civil Judge (Junior Division) Second Court, Serampore, in pre-emption Misc. Case No. 100 of 1986, cannot be sustained and, accordingly, the same is set aside. The application under Order 1 Rule 10(2) read with Section 151 of the CPC filed by the proforma Opposite Parties Nos. 3 and 4 in the pre-emption case, stands allowed. The revisional application is also allowed. But, in the facts and circumstances, there will be no Order as to costs.

14. Mr. Rakshit has supplied a copy of the amendment application filed by the petitioners in the Court below, the same may be kept with the record. Since 1986 the matter is pending before the Court below, the Court below is directed to take all steps to dispose of the matter as expeditiously as possible.