C.O. 903 of 2005

2.9. 2016

Ratan Chandra Sarkar
Vs.
Kushkanta Sarkar & Anr.

Mr. Sukanta Roy,
Mr. Subhrojyoti Bhowmick,
Mr. Madan Mohan Ghosh,
..for the petitioner.

Mr. Partha Sarathi Bhattacharya, Senior Advocate
Mr. Raju Bhattacharya,
Mr. Arunava Maiti,
..for the opposite parties.

1. The revisional application being C.O. 903 of 2005 under Article 227 of the Constitution of India has been directed against the order dated 18.12.2004 passed by the learned Additional District Judge, Fast Track Court, Dinhata in Miscellaneous Appeal (P) No.8 of 2003 confirming the order of pre-emption dated 15.7.2003 passed by learned Civil Judge (Junior Division), Dinhata in Misc. (Pre-emption) Case No.14 of 1995.

2. Heard learned advocate, Mr. Sukanta Roy and learned Senior Advocate Mr. Partha Sarathi Bhattacharya assisted by Mr. Raju Bhattacharya.

3. Mr. Roy representing the petitioner/appellant/pre-emptee opposite of the mis. pre-emption case assailed of the judgement of the appellate court on the grounds that learned appellate court failed to consider that the pre-emption case ought to have been failed for unidenticality of the case plot since in the deed no. 10590 dated 20th July, 1977 on the basis of which the opposite party/respondent/pre-emptor/petitioner of the

pre-emption case claimed pre-emption in respect of the property mentioned in the schedule of the application as co-sharer and adjoining land order does not bear the number of the impugned case plot no.1203 of khatian no.31, and the number of the plot is not matching with the R.S. Khatian no. 95/1 submitted by the opposite party wherefrom also there is unidenticality in the name of the opposite party, where it was recorded as Kush Chandra Ghosh whereas the name of the opposite party is Kush Kanta Sarkar. Further submitted that Parul Bala Barman by purchase from whom the opposite party claimed to have become co-sharer had no saleable right at that relevant time. Further argued that since learned Appellate Court declined to affirm the order of pre-emption on the ground of vicinage but accepted the order of the learned Trial Judge allowing pre-emption on the ground of co-sharership, the object of pre-emption would be frustrated. Mr. Roy with a view to strengthen his submissions relied on the following decisions :-

I. C.O. 1727 of 1994 (Smt. Renuka Chakraborty vs. Mahadev Mondal & Ors.)

II. The judgement in the case of Sri Dushasan Kayal vs. Smt. Sandhyarani Das reported in 1997(2) CLJ 391 and

III. The case of Samsul Haque vs. Hossain Ali Mondal & Ors. reported in 2000(1) CLJ 632.

4. Mr. Bhattacharya in his turn submitted that since either before learned Trial Judge by filing written statement or before First Appellate Court in the memo of appeal or even in the application before this court any ground on identifiability of the property sought to be pre-empted was never questioned, and so that point would not be allowed to be agitated afresh in argument only before this revisional court. The court in exercising the jurisdiction under article 227 of the Constitution of India in a supervisory nature would see whether the decision making process was directed in right direction or

not. Drawing my attention to the defence taken by the petitioner and also the relevant part of the evidence on the record including the observations of both the courts in the judgement submitted that the impugned judgement having no sufferance from perversity or illegality, the said application should be dismissed. Points for determination arose before this Court as follows :-

(a) Whether the point on unidenticality of the plot in question as urged by Mr. Roy should be adjudicated in the revisional jurisdiction.

(b) Whether the impugned judgement of the Appellate Court suffers from illegality or perverseness to make interference.

5. To attend the points raised by Mr. Roy, on verification of the written statement submitted before the learned Trial Court as also observed by learned trial Judge in the order dated 15.7.2003 for Misc Case No. 14 of 1995 for pre-emption I find that the only defence was ventilated as a bargadar in respect of the property sought to be pre-empted. Learned Trial Judge, in view of that stand of the petitioner, had taken step to obtain report under section 21(3) of the West Bengal Land Reforms Act from the concerned Revenue Officer appointed under section 18(1) of the Act, and on the basis of the report learned Trial Judge held “the opposite party no.1 is not a bargadar under O.P. no.2 in respect of the disputed land. Therefore, the contention of the O.Ps that the O.P. No.1 is a bargadar is also not acceptable in this case.” The other defence was denial of co-sharership of the opposite party of the pre-emptor. During course of evidence I find no legal evidence to demolish that the deeds by which Parul Bala Barman had transferred was ever declared by any competent court as null and void. To get lawful corroboration that Parul Bala Barman had saleable right at the relevant time, learned Trial Court took note of exhibit ‘ka’ and exhibit ‘kha’ exhibited on the side of the pre-emptee relying on which learned Trial Judge held, “I do not find any materials which

have declared that the exhibits were null and void. I think until and unless the validity of these two exhibits subsist it operates as a good piece of evidence to establish the co-sharership of the petitioner."

6. It is obvious that in a proceeding of pre-emption save and except in any remote possible case any question of title over any deed duly executed and registered ordinarily is not adjudicated. Because in a case of pre-emption subject-matter is only whether the right of pre-emption is available to the pre-emptor or not on the grounds as envisaged under section 8 of the West Bengal Land Reforms Act. It would be absolutely risk of the pre-emptor to opt for pre-emption of the property so transferred provided he or she is either co-sharer or adjoining land owner and in that event had there been any defect of any kind in the title passed by the impugned deed of transfer the pre-emptor is entitled only to the portion to which he is legally entitled to and nothing more and nothing less since he/she cannot get any better title than passed by the impugned deed of transfer. In turn the pre-emptee would be entitled to get the consideration money along with statutory sum in respect of that pre-empted property deposited by the pre-emptor before the learned Trial Judge as a condition precedent which only in the event of success in the pre-emption case the pre-emptee would be entitled to and in that event also there would be nothing more and nothing less. That is why a right of pre-emption is a weak right though it is exercisable only under the provisions of a special statute. So in between no new right or new plea is entertainable between the pre-emptor and pre-emptee. To explicit myself, even if by the deed of transfer nothing was transferred as it was submitted by Mr. Roy, nonetheless, the pre-emptor deposited the sum for pre-emption and gets success, the pre-emptee would not be debarred to receive the money from the court in the event of success by the pre-emptor at whose choice the proceeding was initiated. The case of Smt. Renuka

Chakraborty (supra) particularly from paragraph 8 it appears that in the reported case ground of vicinage, was not taken by the pre-emptor to pre-empt the property, which is unlike the case in hand. However in the reported case the pre-emptor banked upon his case on the ground of co-sharership which was not accepted by the learned Lower Appellate Court. But ultimately considering the facts and documents and since the right of pre-emption is a valuable right and the purpose behind it is to prevent fragmentations and sub-divisions of land chance was given to the pre-emptor to amend the pre-emption application on the ground of vicinage. Therefore, this decision is not applicable in the present case, since the instant case was filed on both the grounds.

7. From the case of Samsul Haque & Ors. (supra) from where particularly paragraph 7 has been referred to, I find that this Court guided learned court below to consider evidence adduced and also the subsequent events by invoking the provisions of the Code of Civil Procedure. Law is settled that subsequent events can be looked into provided it is pleaded and evidence is adduced to that extent and had there been no consideration obviously there would be departure from rendering administration of justice. Though it is not argued at the bar but from paragraph 7 of the cited judgement it appears that in a case involving the question of pre-emption the basic question as to when a transfer was made complete, the date of completion of registration of the deed of transfer is relevant, and not the date of execution of the deed of transfer. From the impugned deed dated 20th July, 1977 I find that the impugned deed of transfer was copied in the volume of the registry office on 5.12.1977. Therefore, from that angle of vision the question of limitation also has been covered up.

8. From the judgement of Dushasan Kayal (supra) to apprise the contention of Mr. Roy the relevant portion from paragraph 6 is set out hereunder :-

“6. Mr. Sahoo’s further contention is that pre-emption has been claimed in respect of the property which is unidentifiable. This objection was taken in para 13 of

the written objection by the pre-emptee-petitioner, but, from the orders passed by the Courts below it does not appear this objection was pursued there. But this being a question of law and also being a matter of record can be looked into by this Court while disposing of the revisional application."

9. With my humble view, though this judgement was delivered by the bench of same strength the establishing of a property as "unidentifiable" cannot be a question of law rather it is absolutely a question of fact to be established on evidence. Therefore, the decision is distinguishable.

10. Though the revisional court is not supposed to look into the evidence, still considering the submissions advanced by Mr. Roy and the dispute over exercising the right of pre-emption on either side I have gone through the evidence copy of which has been supplied by Mr. Bhattacharya apart from the copies of the pleadings. I have already indicated that in the written statement there is no defence to oppose the right of pre-emption save and except claiming bargadarship which has been turned down in view of the report of the concerned Revenue Officer against which there was no statutory appeal on record.

11. That apart either in the written statement or during the oral evidence there is no defence that the property sought to be pre-empted cannot be identifiable or alternatively the pre-emption case ought to have been suffered for vagueness in the description of the property. I do not find scope to allow the new point for adjudication, raised by Mr. Roy, that the impugned plot did not transpire in the deed no. 10590 of the opposite party. Rather I find that the schedule is identical with the description of the property mentioned in the impugned deed of transfer. Original deed no. 10590 is not on record. Mr. Bhattacharya also submitted that he is not in possession to produce the same but from the second line of the first page of the certified copy of the deed no. 10590 I find that the number of khatian no.31 is very much appearing there and in such hand written deed on the second page in the fourth and fifth line though it is mentioned

sabek dag no.1190 hal 120 but on scrutiny of the very next fifth line and its first mark gives appearance of 3 which due to shortage of space at the end of 4th line of 2nd page was put as the first letter in digit 3 (in Bengali) rather in the 5th line. I came to this finding for two reasons that there was never challenge about the identicality of the property involved in the pre-emption case, and if '3' of the beginning of 5th line of 2nd page of the copy of deed no.10590 be not read tagging with its preceeding digit '120' at the end of 4th line, the sentence would not be carrying any sense.

12. Though it is apparent from the record of the revisional proceeding that khatian no.95/1 was produced where name of the tenant was described as Kush Chandra Ghosh in support of Kushkanta Sarkar and sabek plot no.1203 and hal plot no.1288 are appearing there which is unmatched with the property in question, along the name of the petitioner, but since there is no defence in the pleadings and in the evidence, I find that said khatian does not relate to the case property. But considering the scope of Article 227 of the Constitution and taking note of the nature of the proceeding, which is a pre-emption case, I am not impressed to accept the contention of Mr. Roy to take any different view than of the findings of the learned First Appellate Court made in the judgement under challenge by which the pre-emption has been allowed in favour of the opposite party only on the ground of co-sharership. Therefore, the revisional application stands dismissed. The order of status quo as was passed by this Court on 15.9.2005 stands vacated.

13. The department is directed to send a copy of this order to learned court below as well as the learned Trial judge for information.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.

(Mir Dara Sheko, J.)