

15.11.2021  
S/L No.5  
KS

(Via Video Conference)  
C.O. 1032 of 2017

**Abhijit Agarwala alias Abhijit Agarwal**  
**-Vs.-**  
**Md. Badiruddin**

Dr. Indrajit Mondal

.....For the petitioner

Ms. Shila Sarkar

Mr. Tanmoy Mukherjee

.....For the Opposite Party

The application under Section 115 of the Code of Civil Procedure is taken up for hearing and consideration.

Heard learned advocates for both the parties.

The plaintiff/petitioner has assailed the order dated 23<sup>rd</sup> December, 2016 passed in Misc. Appeal No.13 of 2016 by learned Additional District Judge, Fast Track, 1<sup>st</sup> Court, Malda dismissing the petitioner's appeal by affirming the judgment and order dated 29<sup>th</sup> February, 2016 passed by the Learned Civil Judge, Junior Division, 1<sup>st</sup> Court, Malda wherein the petitioner's application for pre-emption being Misc. (Preemption) 48 of 2009 was dismissed.

The petitioner's case is that the petitioner applied for an order of preemption of the case land sold to the opposite party by a registered instrument on the ground that the petitioner is a

co-sharer. The grounds in this revisional application, inter alia, is that both the Courts have committed error in law and in fact, in dismissing the application for pre-emption under Section 8 of the West Bengal Land Reforms Act on the finding that the application so made is beyond the period of limitation. Thus, it is contented on behalf of the petitioner that learned Courts below ought to have held that the plaintiff/petitioner being the non-notified co-sharer is entitled to pre-emption of the case land on the basis of application filed within the period of three years from the date of the registration of the impugned sale deed as per Article 137 of the Limitation Act. The application is being contested by the opposite party on the contention that it is a well-settled principle of law that Article 97 of the Limitation Act would apply in computing the limitation for exercising right of pre-emption.

My attention is invited to a Division Bench decision reported in *2017 (3) CHN (Cal) 678 (Nurul Islam Vs. Esratun Bibi)* advertng to paragraph 35 and concluding paragraph 39 to submit that Article 97 of the Limitation Act, 1963 is the appropriate provision which govern the period of limitation for filing application for pre-emption by the non-notified co-sharer.

Paragraph 35 is reproduced thus for profitable consideration-

*“35. [Article 97](#) is the appropriate provision which will govern the period of limitation and the starting point thereof so far as the application for pre-emption filed by the non-notified co-sharers are concerned. As such, the period of limitation for filing an application for pre-emption by the non-notified co-sharers will be one year and the starting point of limitation will be different depending upon circumstances as prescribed in the third column of the said schedule. As per the third column of the said schedule the time will begin to run from the date when the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold. Again when the property is of such nature where the subject matter of sale does not admit of physical possession of the whole or part of the property then from the date when the instrument of sale is registered meaning thereby when the registration is complete as per [Section 61](#) of the Registration Act.”*

Article 97 of the Limitation Act provides thus—

|                                                                                                                   |          |                                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 97. To enforce a right of preemption whether the right is founded on law or general usage or on special contract. | One year | When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of physical possession of the whole or part of the property, when the instruments of sale is registered. |
|-------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Thus, it has been held that provision contained in Article 97 of the Limitation Act is the guiding factor for decision on issue of limitation.

My attention is further invited to an unreported decision by a Coordinate Bench of this Hon’ble Court to submit that relying on the above cited decision, the revisional application being, C.O. 1033 of 2017 was dismissed wherein it has been observed that there was no iota of pleading in the pre-emption application itself as to when the possession was taken by the pre-emptee. By so urging on the issue, it is submitted that in the main application under Section 8 of the Limitation Act there is no

whisper with regard to the fact as to when the possession was taken by the pre-emptee save and except the averment in para 4 to the extent that after having learnt on 12.06.2009, the copy of the impugned Deed of Sale was obtained and so the application was filed. Perusal of the impugned order, it would appear that the Learned Trial Court has relied on a decision in the case of *Prasanna Kumar Nag Vs. Prokash Chandra Poddar [2009 (4) CHN 1971]* in respect of the limitation in preemption case under Section 8 of the West Bengal Land Reforms Act, 1955. It is correctly observed that Article 97 of the Limitation Act has provided that to enforce the right of preemption whether the right is founded on law or general usage or on special contract, the limitation is one year from the date when the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or where the subject matter of the sale does not admit of physical possession of the whole or part of the property when the instrument of sale is registered.

Thus, taking facts of the case, the learned Trial Court rightly came to find that the suit property was transferred by the impugned Sale Deed no.3819 dated 02.07.2007 and the preemption case filed was beyond the statutory period as required under Article 97 of the Limitation Act, 1963 and

dismissed the miscellaneous case under Section 8 of the W.B.L.R. Act by a judgment dated 29<sup>th</sup> February, 2016.

The said judgment was appealed against by the present petitioner in Miscellaneous Appeal No.13 of 2016 and the learned Additional District Judge, Fast Track, 1<sup>st</sup> Court, Malda by its judgment dismissed the appeal affirming the judgment and order of the Trial Court finding that the application under Section 8 of the W.B.L.R. Act is barred by limitation.

This Court having gone through the judgments of the Trial Court as well as the Appeal Court does not find any ground to interfere with the impugned judgment.

Accordingly, the revisional application being, C.O. 1032 of 2017 is dismissed, however, there shall be no order as to costs.

All parties are to act on the server copy downloaded from the Official Website.

**(Shivakant Prasad, J.)**