

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 1644 of 2009

(Via video conference)

**Smt. Minati Bosel
-Vs.-
Ashim Kumar Mukhopadhaya**

Mr. Anindya Bose,
Mr. Ayanabha Raha
...for the petitioner

Mr. Prantick Ghosh
...for the opposite party

The pre-emptee/petitioner in a proceeding under Section 8 of the West Bengal Land Reforms Act, 1955 has preferred the instant revisional application against an order whereby the petitioner's application for amendment of her written objection was rejected by the trial court.

Learned counsel for the petitioner contends that the amendment only seeks to bring on record the subsequent devolution of some shares of the property from the original co-sharers and is relevant for the purpose of deciding the preemption application.

Learned counsel for the petitioner further submits that, at the stage of considering an

amendment application, the court cannot go into the merits of the intended amendment.

Learned counsel appearing for the preemptor/opposite party controverts such submission and argues that, on the pretext of this challenge, the preemption application has been kept pending for an inordinately long period, which was already at the argument stage when the impugned order was passed. It is further contended that the learned trial judge was justified in holding that the amendment is not relevant and, as such, rejecting it.

Upon perusal of the impugned order, it is evident that the trial judge was absolutely justified in arriving at the conclusion that the co-sharership, as it existed at the time of the transfer sought to be preempted, is relevant for the purpose of a preemption application. Subsequent devolution of the shares of the original co-owners cannot have any bearing on the preemption case, since the question involved in the said proceeding does not concern the present title of the parties. Even if there has been subsequent devolution, since the execution sale deed is admitted by both sides in the preemption

case, no question arises as regards incorporating such new fact into the pleadings.

As far as the argument regarding consideration on merits of the intended amendment is concerned, the trial judge did not consider the merits of the proposed amendment at all, since the trial court did not arrive at any conclusion as to the veracity of the intended amendment, but merely considered the relevance of the proposed amendment to the adjudication of the preemption application. Such a test is cardinal while adjudicating an amendment application and the trial judge is appreciated for having applying the said test.

As such, C.O. No. 1644 of 2009 is dismissed on contest. The Civil Judge (Junior Division), First Court at Basirhat, District-North 24 Parganas is requested to dispose of the preemption case within three months from the date of communication of this order to the court below.

It is made clear that, although the preemption case is at the argument stage, keeping in view the heavy pressure on the courts below due to staggered functioning in view of the pandemic situation, the stipulation of three

months is given. However, such period is mandatory and peremptory.

The court below shall act on the communication of the learned advocates of the parties and/or server copy of this order, without insisting upon prior production of the certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)