

12th August,
2021
(AK)
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C.O. 1359 of 2020

**Smt. Angur Bala Ghosh and others
Vs.
Smt. Jharna Ghosh**

(Via video conference)

Mr. Saptarshi Kumar Kundu
... For the Petitioners.

Despite service, none appears on behalf of the opposite party.

Learned counsel for the petitioner contends that both the courts below acted without jurisdiction in rejecting the petitioners' pre-emption application under Section 8 of the West Bengal Land Reforms Act, 1955 on the ground that the same was bad for having sought partial pre-emption.

However, by placing the relevant portions of the order of the trial court, learned counsel stresses that the trial court itself had, in the previous part of its judgment, observed that, in the instant case, since the entire Plot no.120 was purchased by the pre-emptee, no pre-emption lay in respect of the said plot and, as such, abandonment/relinquishment of the petitioners' prayer for pre-emption in respect of Plot no.120 would not render the application for Plot no.114 bad on the ground of partial pre-emption.

Despite having arrived at such finding, the trial court erroneously rejected the pre-emption application as not maintainable, thereby creating a clear contradiction between the conclusion and the reasoning portion of the trial court's order.

Despite having found that the petitioners are co-sharers in respect of the disputed property, the trial court rejected the pre-emption application on the above score.

The appellate court affirmed such findings, without going into the question raised by the trial court as regards the pre-emption application not being one for partial pre-emption merely because the claim as regards one of the plots, in which entire share was sold and thus pre-emption was not maintainable, was abandoned and the pre-emption application remained valid in respect of the other plot.

Hence, the impugned order suffers from gross jurisdictional error.

C.O. 1359 of 2020 is, thus, allowed, thereby setting aside Order no.42 dated October 1, 2019 passed by the Additional District Judge at Kalyani, District-Nadia in Miscellaneous Appeal No. 12 of 2013, affirming the order dated July 19, 2013 passed by the Civil Judge (Junior Division) at Kalyani, District-Nadia in Miscellaneous Case No.36 of 2009 and remanding Miscellaneous Case No.36 of 2009 to the trial court for

being re-heard on merits in the light of the above observations.

It will be open to the court of first instance to give further opportunity to both sides to argue the matter and/or adduce additional evidence, if required, before deciding the pre-emption application afresh.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)