

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdiction

(Appellate Side)

C.O. 141 of 1997

with

I.A. No. CAN/7/2020

(Old No. CAN/1408/2020)

Smt. Shipra Ghosh & Ors.

Vs.

Smt. Swapna Ghosh & Ors.

Before: The Hon'ble Justice Arijit Banerjee

For the Petitioners	: Mr. Pinaki Ranjan Mitra, Adv. Mr. Jaydip Basu, Adv. Mr. Sugata Mukhopadhyay, Adv.
For the Opposite party	: Mr. Rwitendra Banerjee, Adv. Mr. Shibasis Chatterjee, Adv. Mr. Sandip Kundu, Adv.
Heard On	: 09.12.2021, 24.02.2022, 10.03.2022 12.05.2022, 23.06.2022 & 14.07.2022
CAV On	: 14.07.2022
Judgment On	: 10.08.2022

Arijit Banerjee, J.:

1. This revisional application is directed against an order dated October 4, 1996, passed by the learned Additional District Judge, 2nd Court, Howrah

in Misc. Appeal no. 166 of 1992 arising out of an order dated May 29, 1992 passed by the learned Munsif, Additional Court, Uluberia in L.R. Case no. 59 of 1988.

2. The relevant facts of the case are as follows.

3. Plot no. 1121 of Mauza Banitabla, P.S. – Uluberia, District - Howrah, was sold by One Ajit Ghosh and Ors. to petitioner nos. 1 to 8 and the predecessors-in-interest of the other petitioners by sale deed dated December 12, 1985. One Tarak Das Ghosh filed L.R. Case no. 1 of 1987 in the Court of learned Munsif, Uluberia, Howrah, under Section 8 of the West Bengal Land Reforms Act, 1955, to pre-empt the said sale on the ground that he is a co-sharer raiyat and also on the ground of vicinage, claiming that he had the longest common boundary with the disputed land. Although the land in question was sold in favour of the petitioners at and for a consideration of Rs. 6,000/-, Tarak deposited only Rs. 1,100/- claiming that Rs. 6,000/- shown in the sale deed was an inflated figure. The petitioners herein contested the said L.R. Case by filing written statement wherein they denied the material averments made in the application for pre-emption.

4. The said case was transferred to learned Munsif, Additional Court, Uluberia and was renumbered as L.R. Case no 59 of 1988. By an order dated May 29, 1992, the learned First Court allowed the application for pre-emption.

5. The petitioners filed an appeal against the said order before the learned Additional District Judge, 2nd Court, Howrah, being Misc. Appeal

No. 166 of 1992. By a judgment and order dated October 4, 1996, the appellate Court dismissed the appeal filed by the present petitioners. That order is the subject matter of challenge in the present revisional application.

6. I have heard learned Counsel for the respective parties at length and have given anxious consideration to the arguments advanced on behalf of the parties.

7. The learned First Court negated the contention of the pre-emptor that he was a co-sharer. However, it was held that the pre-emptor was a boundary man and the purchasers were strangers. The prayer for pre-emption was allowed on the basis of vicinage. The pre-emptor or subsequently his successors-in-interest did not challenge the finding of the First Court that the pre-emptor was not a co-sharer. Such finding has therefore attained finality. The First Court also negated the pre-emptor's contention that the amount of Rs. Six thousand shown in the sale deed as consideration for the disputed land was an inflated amount. However, the pre-emptor was allowed to deposit the balance consideration money plus 10 per cent of the said amount within two months from the date of the order.

8. The Appellate Court affirmed the order of the Trial Court. It held that the appellants could not establish their plea that the disputed land is separated by a canal from the land of the pre-emptor.

9. Before me, in this revisional application, the following points were urged by learned Advocate for the petitioners:-

(i) No right of pre-emption arose in this case as the under sold his entire land to the purchaser.

(ii) In the absence of the pre-emptor depositing the entire consideration money shown in the impugned sale deed plus 10 per cent thereof, the application for pre-emption was not maintainable.

(iii) The learned Munsif had no jurisdiction to entertain or allow the application and then permit the plaintiff/pre-emptor to deposit the balance sum of money within 2 months.

10. Learned Advocate for the opposite party disputed each of the above contentions and submitted that the orders of the Trial Court and the Appellate Court do not call for intervention.

11. In my considered opinion, each of the points argued on behalf of the petitioner has merits. Section 8 of the West Bengal Land Reforms Act, 1955 (in short, 'the said Act') in so far as the same is relevant for the present purpose reads as follows:-

“8. Right of purchase by co-sharer or contiguous tenant.”-(1) If a portion or share of a [plot of land of a raiyat] is transferred to any person other than a [co-sharer of a raiyat in the plot of land], [the bargadar in the plot of land] may, within three months of the date of such transfer, or] any [co-sharer of a raiyat in the plot of land] may, within three months of the service of the notice given under sub-section (5) of Section 5, or any raiyat possessing land [adjoining such plot of land] may, within four months of the date of

such transfer, apply to the [Munsif having territorial jurisdiction,] for transfer of the said portion or [share of the plot of land] to him, subject to the limit mentioned in [section 14M,] on deposit of the consideration money together with a further sum of ten per cent of that amount.”

12. A bare perusal of the aforesaid provision would show that it contemplates transfer of “a portion or share of a plot of land” of a raiyat. If the entire plot of land is transferred, the right of pre-emption would not arise under Section 8. If any authority is required for this proposition, one may refer to ***Sri Bhuban Chandra Samanta v. Jamini Bhusan Kar & Ors.: 1970 CLJ Page. 349 and also Apurba Sarkar v. Arabinda Adhikary: 2019(5) CHN (CAL) 464.***

13. The decision in the case of ***Saranan Mondal & Anr. v. Bejoy Bhushan Ghosh: AIR 1979 CAL 174*** is an authority for the proposition that before an application under Section 8 of the 1955 Act may be entertained, whether on the ground of the petitioner being a co-sharer in the plot of land or on the ground of he possessing adjoining land, it is incumbent on him to show that there was transfer of either a portion or share of a plot of land of a raiyat. At paragraph 6 of the reported judgment, the Court held as follows:-

“6. The learned lawyer for the petitioner contended that the Court of appeal below was wrong in holding that as the opposite party No. 1 also had land adjoining the lands sought to be pre-empted,

an application under Section 8 of the Land Reforms Act could not lie. Before I discuss the question raised on behalf of the petitioner and those raised on behalf of the Opposite Party No. 1, I consider it proper to point out that both the Courts below as also the learned lawyers representing the parties lost sight of one very important matter which alone should have resulted in failure of the application under Section 8 of the West Bengal Land Reforms Act. A perusal of the application under said Section 8 would show that nowhere in the four corners of the application the petitioner did make out the case that there was transfer of a portion or share of the holding of a raiyat. Before an application under said section 8 may lie whether on the ground of the petitioner being a co-sharer in the holding or on the ground of his possessing land adjoining such holding, it is incumbent on the petitioner to show that there was transfer of either a portion or share of a holding of a raiyat. The word "holding" has been defined by Section 2(6) of the said Act as meaning the land or lands held by a raiyat and treated as a unit for assessment of revenue. In the preset case, there is no averment in the application under Section 8 stating that there was a transfer of a share or portion of a holding of a raiyat. The application proceeded on the basis that O.P. No. 2 transferred some property mentioned in the schedule thereto and the schedule simply shows that Plots Nos. 2055, 2048 and 2075 measuring respectively .09, .05 and .04 cents of P.S. Dubrajpur Mouza Simlakuri, Khaitan No. 109 were the lands transferred. Thus, when the very vital

requirement of Section 8 of the said Act was not found complied with, the application under Section 8 should have failed on that ground.”

14. The words ‘plot of land’ came to be substituted for the word ‘holding’ by Act (XXXI) of 2000 with retrospective effect from 07.08.1969. But that would make no difference and the principle of law would remain the same.

15. The other two issues are connected in as much as if the learned Munsif could not have entertained the application for pre-emption, the question of allowing the application and then permitting the plaintiff/pre-emptor to deposit the balance sum of money within 2 months, could not arise.

16. The point as to whether or not deposit of the consideration amount mentioned in the impugned transfer deed plus 10 per cent of such amount is a pre-condition for maintainability of an application for pre-emption under Section 8 of the 1955 Act, is no more *res integra*. The Hon’ble Supreme Court, in its decision in the case of ***Barasat Eye Hospital and Ors. v. Kaustabh Mondal: (2019) 19 SCC 767***, at paragraph 35 of the reported judgment held as follows:-

“35. As we have discussed above, once the time period to exercise a right is sacrosanct, then the deposit of the full amount within the time is also sacrosanct. The two go hand-in-hand. It is not a case where an application has been filed within time and the amount is deficient, but the balance amount has been deposited

within the time meant for the exercise of right. We are saying so as such an eventuality may arise, but in that case, the right under the application would be triggered off on deposit of the amount which, in turn, would be within the time stipulated for triggering the right. That not having happened, we are of the view that there cannot be any extension of time granted to the respondent now, to exercise such a right. This is, of course, apart from the fact that this speculative exercise on behalf of the respondent has continued for the last fourteen years, by deposit of 50% of the amount.”

It is clear from the above aforesaid judgment that unless the plaintiff/pre-emptor deposits the requisite amount as mandated by statute, his application for pre-emption under Section 8 of the 1955 Act would not be maintainable.

17. A learned Judge of this Court in the case of **Sk. Abdul Odud Ali v. Emanulla Khan and Others: 2021 SCC OnLine Cal 2078** has interpreted the aforesaid decision of the Hon’ble Supreme Court as laying down that the pre-condition of deposit of the transaction amount along with statutory interest of 10 per cent for maintainability of a pre-emption application applies only when the application is on the basis of vicinage. The learned Judge differed with the decision of another learned Judge in the case of **Smt. Kamala Rani Roy & Ors. v. Sri Sambhu Sen & Ors.: 2021(1) ICC 740 (Cal.)** and has referred the following question to a larger Bench;-

“Whether a pre-emption application under Section 8 of the West Bengal Land Reforms Act, 1955, on the ground of co-sharership, can be rejected at the outset as not maintainable if the application is accompanied by a deposit of an amount less than the consideration shown in the sale deed sought to be pre-empted, along with the statutory interest of 10%, on the allegation that the price shown in the deed was inflated and the actual consideration money paid according to the pre-emptor is the lesser amount deposited with the pre-emption application and that no notice under Section 5 of the said Act was served on the co-sharer/pre-emptor.”

18. I have noted above that the plaintiff's claim of being a co-sharer was rejected by the learned Trial Judge. Such rejection has not been challenged by the plaintiff/opposite party. Hence, the question that has been referred to the larger bench is not relevant for the purpose of disposal of the present application. There is no controversy that when the plaintiff seeks to exercise a right of pre-emption on the basis of vicinage, his application is liable to be rejected *in limine* if he has failed to deposit an amount equal to the consideration money showed in the impugned deed of transfer plus 10 per cent of such amount.

19. In view of the aforesaid this application succeeds on contest. The judgments and orders of the learned Trial Court and the Appellate Court are set aside.

20. C.O. 141 of 1997 along with application being I.A. No. CAN/7/2020 (Old No. CAN/1408/2020) is accordingly disposed of.

21. There will be no order as to costs.

22. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arijit Banerjee, J.)