

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

C.O. No. 303 of 2021

Sri Provat Saha & Ors.

Vs

Smt. Soma Ghosh & Ors.

For the Petitioner	: Mr. Sambhunath De, Adv.
	: Mr. B.K Samanta, Adv.
For the O.P No.1	: Mr. Rupayan Deb, Adv.
	: Ms. Priya Nandy, Adv.
	: Ms. Varsha Roy, Adv.
Last Heard on:	: 18.11.2022
Judgment on:	: 22.11.2022

Partha Sarathi Sen, J. : –

1. The present revisional application under Article 227 of the Constitution of India arises out of the judgement and order dated 28.01.2020, as passed by Learned Additional District Judge, 4th Court, Malda, in Misc. Appeal No. 09/2019 whereby and whereunder the said court dismissed the said appeal as preferred by the pre-emptee, the petitioner herein and thus affirmed the order no.24 dated 19.03.2019, as passed by Learned Civil Judge, Junior Division, 1st Court, Malda in Misc. Pre-emption Case No.41/2016 as filed by the

pre-emptor under Section 8 of the West Bengal Land Reforms Act, 1955(hereinafter referred to as the Said 'Act').The pre-emptee i.e. the petitioners herein felt aggrieved and thus preferred the instant revisional application.

2. At the time of hearing of the instant revisional application, learned advocate for the revisionist/pre-emptee draws attention of this Court to the certified copy of the impugned judgement as well as to the order no.24 dated 19.03.2019, as passed in Misc. Pre-emption Case No.41/2016 by the Learned Civil Judge, Junior Division, 1st Court, Malda. It is contended that while passing the aforesaid two judgements both the aforementioned courts have failed to appreciate that the present petitioners are not co-sharers of the suit property and thus both the aforementioned two courts committed serious error of law as well as of fact in holding that the petition under Section 8 of the said Act is very much maintainable. It is further argued that both the aforesaid two courts wrongly held that no partition has been made amongst the co-sharers of the suit property and at the same time the said two courts have wrongly held that the suit property which has been transferred to the petitioners herein is not a demarcated property. It is argued that before the aforementioned two courts sufficient materials have been placed to substantiate that under cover of sale deed dated 29.02.2016, which was registered on 10.03.2016 the suit property being demarcated

portion of the suit plot was transferred to the petitioners by their vendor(s) and therefore both the aforesaid two courts ought to have held that the pre-emption application as filed by the opposite party herein are not maintainable in the eye of law.

3. In the course of his submission learned advocate for the petitioners places his reliance upon two reported decisions namely **Naymul Haque @Nainul Haque vs. Allauddin Sk. Reported in 2019(1) CLJ(Cal) 488 and Dilip Kumar Dhara and Another vs. Ranjit Kumar Mondal reported in AIR (2019) Cal 67.**
4. This Court has meticulously perused the entire materials as placed before this Court. This Court has also gone through the impugned judgement dated 28.01.2020, and the order no.24 dated 19.03.2019, as passed by the learned trial court in Misc. Pre-emption Case 41/2016. This Court has given its anxious consideration over the submissions of the learned advocates of both the sides.
5. On perusal of the judgements as passed by the First Appellate Court as well as the trial court as referred to above it reveals to this Court that both the aforesaid two courts have come to a concurrent factual finding that by the aforesaid deed no demarcated portion has been transferred in favour of the present opposite parties. It is also the concurrent finding of the aforesaid two courts that no materials have been placed before them that the suit properties have been partitioned by metes and bounds either by a registered deed of

partition or through a decree of a competent court amongst the co-sharers of the suit plot. Both the aforesaid two courts by the aforesaid two judgements also came to a concurrent finding that even though the entire share of the vendor(s) have been transferred to the pre-emptee i.e. the petitioners herein but since that property is unpartitioned pre-emption is very much maintainable.

6. In order to access as to whether the above findings of the learned trial court and the First Appellate Court are justified or not, this Court proposes to look to the provision of Section 8 of the said Act and the same is reproduced hereunder in verbatim:-

“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:

(2)

(3).....”

7. At this juncture this Court also proposes to look to the judgement as passed by a Coordinate Bench of this High Court in the reported decision of

Sk. Sajhan Ali & Ors. Vs. Sk. Saber Ali and Anr. Reported in (2015) 3

CHN 689 wherein the Hon’ble Court expressed the following views:-

“.....

22. It is, therefore, clear that if a portion or share of a plot of land of a raiyat is transferred to any person than the co-sharer of a raiyat in a plot of land, any co-sharer of a raiyat in a plot of land may within three months from the date of service of notice given under sub-section 5 of Section 5 apply to the Munsiff having territorial jurisdiction for transfer of the said portion or share of a plot of land to him on deposit of the consideration money and the compensation. The second proviso to the said Section contains an order of preference over the adjoining raiyat in case the Bargadar does not apply for such transfer. The raiyat is defined in Section 2(10) of the said Act to mean a person having undermarked interest in the plot of land along with the raiyat in terms of Section 2(6) of the said Act.....

.....
34. This Court, therefore, hold that the preemption application is maintainable even when the entire share or entire portion of a plot of land is transferred by a raiyat to any person other than the co-sharer raiyat.”

8. Since there is another contrary judgement on this point of our High Court, the matter was referred to a Larger Bench and before the Larger Bench in the reported decision of **Naymul Haque @Nainul Haque (supra)** view as taken in the judgement of **Sk. Sajhan Ali (supra)** has been upheld.

9. In considered view of this Court the reported decision of **Dilip Kumar Dhara and Another (supra)** as cited from the side of the petitioners has got no application in the present case since the subject matter as involved in the case of **Dilip Kumar Dhara and Another (supra)** is quite distinguishable from the facts and circumstances as involved in the present revisional application.

10. In view of the discussion made hereinabove this Court holds that the learned trial court as well as the Appellate Court did not commit any wrong in holding that since the entire undivided share of the vendor(s) have been transferred in favour of the present petitioners/pre-emptee the preemption application as filed under Section 8 of West Bengal Land Reforms Act, 1955, is

very much maintainable and thus this Court finds no infirmity and/or illegality in the impugned judgement.

11. The instant revisional application is thus devoid of any merit and is thus dismissed.

12. The impugned judgement and order dated 28.01.2020, as passed by Learned Additional District Judge, 4th Court at Malda, in Misc. Appeal No. 09/2019, is hereby affirmed.

13. Let a copy of this judgement along with the LCR if received in the mean time be sent down at once.

12. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)