

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 93 of 2023

Bablu Mistry
Vs.
Nemai Chandra Maity & Ors.

Mr. Sandip Das
... For the petitioner/Pre-emptee

Mr. Indranath Mukherjee
... For the opposite party/Pre-emptor

In this application the order no.14 dated 19th November, 2022 passed in connection with P. Misc. Case No.12 of 2022 pending before the learned Civil Judge (Junior Division), 3rd Court, Diamond Harbour, South 24-Parganas, has been challenged whereby the learned Judge allowed one amendment application filed by the opposite party/pre-emptor with a prayer for amendment of schedule of the plaint with regard to the total land in plot no.2312.

Mr. Sandip Das, learned advocate, appearing on behalf of the petitioner/pre-emptee has strenuously argued that both the parties to the P. Misc. Case purchased their respective land by deeds of conveyance showing total 23 decimals of land. According to Mr. Das, the petition with a prayer for amendment of the total land from 23 decimals to 13 decimals cannot be allowed at this stage when trial of the case has already been commenced. In support of his contention, Mr. Das has

referred to the schedule of the plaint as well as deeds by which the petitioner/pre-emptee purchased the land in question.

Per contra, Mr. Indranath Mukherjee, learned advocate, appearing on behalf of the opposite party/pre-emptor by referring the record of rights (RS records and LR records) submitted that total land in plot no.2312 is 13 decimals and not 23 decimals.

With regard to commencement of trial, Mr. Mukherjee has relied on a case of **Sree Sree Iswar Radha Behari Jew v. Malati P. Soni** reported in **AIR 2019 Calcutta 131** wherein the Hon'ble Division Bench of this Court has observed as follows:-

“39. The question raised in the reference is, thus, answered as follows: The expression “commencement of trial” in the proviso to Order VI, Rule 17 of the Code of Civil Procedure would imply the date when the court first applies its mind after the affidavit of evidence is filed and when the first witness proves his affidavit of evidence or such witness seeks to prove a document for it to be tendered in evidence or the cross-examination of such witness begins, whichever is earlier.”

In this case, the examination-in-chief supported by affidavit was filed and PW-1 was called to adduce evidence. There is nothing on record that PW-1 proved his affidavit on evidence as it appears from the first line of the impugned order.

Considering the impugned order and the reason assigned therein together with the documents, i.e., record of rights shown at the instance of the learned advocate on behalf of the opposite party/pre-emptor, and deeds of conveyance, I do not find any reason to interfere with the order of the learned Judge in allowing the amendment application with a prayer for considering a fact of measurement of actual land in plot no.2312 wherefrom both the parties to the P. Misc. Case purchased their respective lands by deeds of conveyance. Moreso, the stage of the proceeding cannot be said to have been commenced in view of the principle laid down in **Sree Sree Iswar Radha Behari Jew** (supra).

In the premise set forth above, the order no.14 dated 19th November, 2022 passed by the learned Civil Judge (Junior Division), 3rd Court, Diamond Harbour, South 24-Parganas, in connection with P. Misc. Case No.12 of 2022, stands affirmed.

With the aforesaid observation, the revisional application, being CO 93 of 2023, stands dismissed.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)