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26.9.2023
Ct. 236
SB

C.O. 237 of 2014
CAN 1 of 2017

In the matter of : Sri Mithu Sarkar & Anr.

Mr. Sibasish Ghosh
Mr. Prasanta Kr. Banerjee
Ms. Indrani Nandi ... for the petitioners

1. Affidavit of service is taken on record.
2. Heard Mr. Ghosh, and Mr. Banerjee, learned advocates representing the petitioners.
3. Despite service none is appearing on behalf of the opposite parties.
4. The application under Article 227 of Constitution of India impeaches the order dated 22.11.2013 passed by learned Additional District Judge, Kalna in Misc. Appeal No. 20 of 2012.
5. Briefly stated that the property in question was acquired by way of inheritance by the petitioner Sri Santi Mohan Garai together with his two brothers Purna Chandra Garai and Ajit Garai. After demise of Santi Garai his legal heirs sold and transferred 1/3rd share of Purna Chandra Garai in favor of Sri Mithu Sarkar and Pravat Sarkar by a deed of sale on 02.6.2005 at a consideration of Rs.36,000/-
6. Santi Garai filed an application under Section 8 of the West Bengal Land Reforms Act, 1955 to pre-empt such transfer but he did not deposit the admitted consideration

amount and 10% thereof instead he fixed the valuation of the property at Rs.25,000/- and deposited Rs. 27,500/-.

7. It is submitted by Mr. Ghosh that because of this non-payment of the entire consideration money together with 10% of the said amount the petitioners could not have maintained the petition under Section 8 of the West Bengal Land Reforms Act, 1955.

8. Learned Trial Court, however, decided the application in favour of Santi Garai without taking into consideration this requirement of law.

9. To buttress his point, Mr. Ghosh places his reliance on the Hon'ble Supreme Court in the case of **Abdul Matin Mallick vs. Subrata Bhattacharjee (Banerjee) and Others** reported in **(2022) 7 SCC 147**. In the said judgement the Hon'ble Apex Court held :

“6.3. Therefore, deposit of the entire sale consideration with additional 10% of the sale consideration along with the pre-emption application is a statutory and mandatory requirement and it is a precondition before any further enquiry as contemplated under Section 9 of the Act is held. In the present case, admittedly, the pre-emptors had not deposited the entire sale consideration with additional 10% of the sale consideration along with the pre-emption application. The aforesaid aspects have not been considered either by the first appellate court or even by the High Court in this case.”

“9. At this stage, it is required to be noted that even the High Court in the impugned judgment and order has permitted the pre-emptors to deposit the balance sale consideration. However, faced with the decision of this Court in the case of Barasat Eye Hospital and Ors. (supra) and in light of the observations made by us hereinabove that alongwith the pre-emption application, the pre-emptors have to deposit the entire sale consideration with additional 10% and only thereafter the further enquiry can be conducted as per Section 9 of the Act, 1955 and therefore, unless and until the same is complied with, the pre-emption application would not be maintainable, the High Court is not justified in permitting the pre-emptors to now deposit the balance sale consideration with additional 10% while

deciding the revision application. Such a direction/permission/liberty would go against the intent of Section 8 of the 1955 Act.”
”

10. In ***Barasat Eye Hospital and Others vs. Kaustabh Mondal*** reported in ***(2019) 19 Supreme Court Cases 767*** the Honble Apex Court held : 29

“28. We are, thus, firmly of the view that the pre-requisite to even endeavour to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration, as otherwise, Section 8(1) of the said Act will not be triggered off, apart from making even the beginning of Section 9(1) of the said Act otiose.”

11. The order impugned, therefore, cannot be sustained and is set aside.

12. The revisional application is disposed of along with application being CAN 1 of 2017.

13. Let a copy of the order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)