

24.2.2023  
64  
Ct. no. 652  
sb

**C.O. 1219 of 2019**

**Gouri Sankar Dinda & Anr.**  
**Vs.**  
**Rajesh Kumar Kabra & Ors.**

Mr. Asit Baran Rau  
Mr. Tuhin Subhar Raut  
Mr. Asit Kr. Chowdhury  
Ms. Ishita Raut ...for the petitioners

Mr. Ashok Kr. Banerejee, Sr. Adv.  
Mr. Sekhar Kumar Saha ...for the O.P. No. 1

Being aggrieved and dissatisfied with the order dated 2<sup>nd</sup> March, 2019 passed by the learned Civil Judge, Junior Division, Bidhannagar, North 24 parganas in Misc. case no. 02 of 2014, present revisional application under Article 227 of the Constitution of India has been preferred.

Petitioner contended that the opposite party no. 1 as the pre-emptor has initiated aforesaid proceeding under Section 8 of the West Bengal Land Reforms Act, 1955 against the petitioners herein. In the said application for pre-emption, it has been contended that the petitioners purchased a portion of the agricultural land on 17.7.2022 and the opposite party/pre-emptor is the owner in possession of the adjoining plot of land which he inherited from his father and as such he is entitled to pre-empt the said plot of land on the ground of

vicinage. In the said application for preemption, it has been averred that the deed of sale in question dated 17.7.2002, for the first time came to the knowledge of the petitioner/pre-emptor on 16.12.2013 and immediately, thereafter he applied for the certified copy and immediately after getting the certified copy, he has filed the aforesaid suit for preemption. The petitioners herein duly filed written objection contending that the said application under Section 8 of the said Act is hopelessly barred by law of limitation and the petitioner has no locus standi and is not competent to file the instant case for preemption.

Accordingly, the petitioners herein have took out one application under Order VII rule 11 of the Code of Civil Procedure praying for an order of rejection of preemption application filed under Section 8 of the said Act on the ground that said application is ex facie barred by law of limitation. The opposite party no. 1 herein filed written objection in the said application and contended that he came to know about impugned sale deed on 16.12.2013. Learned Court below has taken up said application under Order VII rule 11 for hearing on 2.3.2019 and was pleased to reject the application by the impugned order.

Learned counsel for the petitioner submits that the court below has failed to appreciate that the suit is ex facie barred by law of limitation in view of the fact that

the deed in question was executed long before 12 years of filing of the case. The deed was executed in the year 2002 and it was within the knowledge of each and everybody of the vendor's family including the present pre-emptor and as such the contention of the pre-emptor that he came to know about such transaction for the first time on 16.12.2013 is absolutely incorrect and not at all reliable. Learned court below failed to consider that the limitation for making an application in the case of contiguous rayat is four months from the date of transfer. Accordingly, the petitioner has prayed for setting aside the impugned order.

In this context, the learned counsel for the petitioner has relied upon a judgment passed by a coordinate bench of this court in C.O. 2221 of 1993 and also Supreme Court judgments reported in (2008) 14 SCC 445, AIR 1977 SC 2421, (2014) 14 SCC 254.

Learned counsel for the opposite party raised objection and contended that the court below has rightly pointed out that the points of limitation is a mixed question of law and fact and the same cannot be determined without taking evidence. Therefore, at this stage, the question whether the suit is barred by law of limitation or not cannot be determined without taking evidence by framing issue. In this context, he relied upon judgments reported in Air 2007 (7) Supreme 532 also AIR 2008 SC 690.

I have considered the submissions made by both the parties. On perusal of the plaint filed in Misc. case no. 2 of 2014, it appears that preemptor/opposite party no. 1 has averred in paragraph 4 of the petition that the petitioner came to know about the said deed in question for the first time on 16.12.2013 and immediately thereafter, he applied for certified copy and after getting certified copy, he has filed the pre-emption case well within time.

Though learned counsel for the petitioner submits that such averment has no basis at all as pre-emptor has not clarified in his application as to how he gathered knowledge about the deed for the first time on 16.12.2013, when all his co-sharers who are vendor of petitioner and opposite parties herein, reside in the same address at 230, A.J.C. Bose Road, Bhownipur, Kolkata, which is their common address, as appearing from the affidavit and as such, the averment is not at all believable. Furthermore, a previous suit was filed praying for cancellation of the deed being no. 396 of 2006 which was ultimately dismissed being barred by law of limitation on 6.3.2017 and while discussing issue no. 2, the court held that the suit is barred by limitation and accordingly, issue decided against the plaintiffs. Accordingly, the petitioner contends that they have knowledge all along and as such there is no need to proceed with the false

and vexatious claim of the petitioner any further and the plaint should be rejected.

As mentioned above, pre-emptor in his application in paragraph 4 of plaint has stated that he came to know about the existence of sale deed dated 17.2.2002 only on 16.12.2013 and accordingly he has specifically mentioned in paragraph 9 that cause of action of the pre-emption application arose on 16.12.2013, when it has come to his knowledge.

Normally a plaint has to be rejected not by taking evidence or reading the written statement, but by finding out what it contained in the plaint itself. It is only where on the face of the plaint, a suit appears to be barred by any law that the court shall reject the plaint. But where it does not so appear, but requires further consideration, or in other words, if there is any doubt or if the court is not sure and certain that the suit is barred by some law, the court cannot reject the plaint.

In the present case, petitioners herein have certain plea suggesting that the pre-emption had knowledge about the deed for the year 2002 and on the contrary, pre-emptor/opposite party's definite case is that he came to know about the deed of 2002 only on 16.12.2013. Accordingly, at least it is clear that statements of plaint does not suggest that the suit is barred. Now whether pre-emptor really had knowledge prior to 16.12.2013 is question of fact to be considered during the trial. In the

suit where there is a dispute as regards date of knowledge, such issue can never be a point of law only for ascertainment of date of knowledge. As such the issue involved is a mixed question of law and fact. A plaint cannot be rejected on the ground of limitation especially when it is a mixed question of law and fact and is connected with the merit of the claim and as such, such point has to be tried along with other issues.

In view of aforesaid discussion, case cited in (2014) 14 SCC 254 is not applicable in the present case as in that case suit filed after 14 years of execution of sale deed without showing reason and facts of the case disclosed that sale deed executed in 1992 was known to the plaintiff in 1993, which was admitted position in that case. Since it is doubtful at this stage without taking evidence as to whether pre-emption had knowledge about the deed earlier or not, case law referred in AIR 1977 SC 2421 is not applicable in this context.

Accordingly, I do not find any substance to interfere with the order impugned and as such C.O. 1219 of 2019 is dismissed. However, I make it clear that I have not gone into the merits of the case and I am informed that the trial court has already framed an issue on the point of limitation. If such issue has already been framed, the trial court will decide the said issue and all such questions shall be kept open before the court below and the court will decide the issue without being influenced by any

observation made herein. The court below will make every endeavour for expeditious disposal of the suit and shall make best attempt to conclude the entire proceeding without granting any unnecessary adjournment to either of the parties, preferably within a period of ten months from the date of communication of this order.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

**(Ajoy Kumar Mukherjee, J.)**